

# **CARTER COUNTY RESOURCE USE PLAN**

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## **THE CONTINUING PROCESS**

Land and natural resources are essential to local industry and residents. It is the policy of this county that the design and development of all federal and state land dispositions and acquisitions, including boundary adjustments or land exchanges, be carried out for the benefit of individual property owners and to the benefit of the citizens of Carter County.

The Carter County Board of County Commissioners recognizes that this plan is an interim plan. The Resource Use Plan will be a work in continuous progress. It will require the cooperation, work, and dedication of many county residents. Additional planning alternatives will be developed and added to this plan. The ongoing planning will include consideration of all historic and current land uses in Carter County.

The Board has established a Carter County Planning Board and community-based subcommittee to advise and assist the Board in formulating county policy with respect to land and resource use issues. For purposes of this document, the subcommittee is known as the Resource Use Committee and the plan they are working on is known as the Resource Use Plan, which is one component of the Carter County strategic use planning process.

The Carter County Land Planning Board is responsible for land and resource use planning in Carter County. Members of the planning board include representatives from the incorporated Town of Ekalaka and the unincorporated areas of the county.

To address the most critical issues facing the County, now and in the future, the Carter County Board of Commissioners authorized the Carter County Land Planning Board to develop a County Growth Policy in accordance with § 76-1-601 through 76-1-606, Montana Code Annotated (MCA).

The Carter County Growth Policy was adopted on 08/12/2024 and is the responsibility of the Carter County Land Planning Board and takes into consideration all areas of the County, including the incorporated Town of Ekalaka and the unincorporated communities of Albion, Alzada, Belltower, Boyes, Capitol, Hammond, Mill Iron, Ridge, and Ridgeway. The Town of Ekalaka prepared its own amendment to the policy, which was subsequently adopted by both the Town Council and the County Commissioners in 2013.

The 2024 Carter County Growth Policy is a document that provides a vision for the County indicating how it wants to develop and make public investments over the next 20 years. It provides the long-range focus to help decision-makers set priorities and evaluate whether development proposals are consistent with this vision. It is a tool to coordinate with other government agencies and to communicate to citizens and developers the vision of the community. The Policy provides the framework for regulatory updates, land use decisions, and public investments and will be an invaluable resource for the County.

The County's Growth Policy and Resource Use Plan are primary tools employed to guide the use of lands and resources while protecting the rights of private landowners in Carter County. Because 35% of lands in the county are Federal or State Lands, the Growth Policy is a major

instrument for Carter County to coordinate land management activities conducted by federal or state agencies. Cooperative relationships and communication exist between the agencies and the county.

In May of 2023 the Montana Legislature passed Senate Bill No. 382. This bill created the Montana Land Use Planning Act, which requires cities that meet certain population thresholds to utilize the land use plan, map, zoning regulations, and subdivision regulations outlined in the Act. Population thresholds include those counties with a population greater than 70,000. It also allows other local governments, such as Carter County, the option to utilize the provisions of the Act, requiring public participation during the development, adoption, or amendment of a land use plan, map, zoning regulation, or subdivision regulation. The Act also offers strategies to meet population projections. Consideration of factors such as housing, local facilities, economic development, natural resources, environment, and natural hazards when developing a land use plan, map, or zoning regulation is also included, as well as a procedure to review subdivisions and approve final plans.

## **INTRODUCTION**

Carter County is a general law county and, as such is a political subdivision of the State of Montana, having corporate powers and exercising the sovereignty of the State of Montana within its boundaries, as provided in the Montana Constitution, those powers specified by statute and those necessarily implied there from.

Only the Carter County Board of County Commissioners (hereinafter referred to as the “Board”) can exercise the powers of the county by agents and officers acting under the authority of the Board. The Board serves as the Chief Executive authority of the county government and is charged by law with performing all duties necessary to the full discharge of these specified and implied executive duties. The Board is charged with governing Carter County in the best interest of all its citizens and one of its duties is to supervise and protect the tax base of the County.

The Board is well aware that one goal of the county’s citizens, and therefore its government, has been the continuation of a lifestyle which assures quiet enjoyment of private property rights and property interests and assures the highest degree of protection of these rights. Property rights and interests are important to the people who live and work in this remote county, which has an area larger than some states, but the population of a small town. Many people who live in this county are reliant upon the land and its productive use. Private ownership and the incentive provided by private ownership is a driving force that supports the livelihood of many Carter County citizens.

The Board is also well aware that at this time federal and state-managed lands make up over thirty-five percent of the area of Carter County. Moreover, the county’s economy is affected by changes on federal, state and private lands. State and federal agencies are charged by law with governing state and federal lands inside Carter County’s political boundary in the best interest of all the citizens. Local, state and federal planning decisions may create benefits for a great many state and national citizens outside the county but may transfer a disproportionate amount of the costs and responsibilities to local communities and citizens. For more information on the County’s relationship to federal and state governments, please refer to Appendices A, B and D.

The Board believes that the American concept of government of the people, by the people and for the people is best served when government affairs are conducted as close to the people as possible (i.e. at the county level). The Board is charged with carrying out its specified and inherent duties to operate the government of Carter County in the best interests of all its citizens and to protect and preserve the county's tax base. The Board finds it desirable to address the use and management of other resources within the political jurisdiction of the County in its comprehensive planning efforts. The Board reached its decision in part because a large area of the county is managed by either the federal or the state government, and because the use and management of that land has a substantial and significant impact on the economic stability of Carter County. The Board is therefore legitimately interested in fully participating in the planning process utilized by federal and state agencies for determining and implementing land use plans and other actions in Carter County. The Board's interest extends to land use plans or action formulation, development, and implementation (which include monitoring and evaluation).

It is the intent of the Carter County government to protect the custom and culture of county citizens through a variety of actions. It is the policy of Carter County to work with federal and state agencies, so that they will hereafter coordinate and consider County, State and Federal policies before implementing actions, both within and without the boundaries of Carter County that affect local communities and citizens.

Federal and State Laws require federal and state agencies to coordinate with the local government and consider the local land use plans in the process of planning and managing federal and state lands within the geographic boundaries of Carter County, Montana. Federal and state agencies proposing actions that will impact the County, its citizens, and resources therein should prepare and submit in writing, in a timely manner, report(s) on the purposes, objectives and estimated impacts of such actions, including economics, to the Carter County Board of County Commissioners, PO Box 315, Ekalaka, MT 59324 for review. The Board will then determine appropriate action to be taken by the County, and provide input, information and comments on proposed actions or activities. The Board will also notify other government agencies of actions proposed by the Board affecting various resources and amenities in Carter County and solicit other agency input and comment. The purpose of this exchange of information and input is to minimize impact upon and maximize benefit to the residents of Carter County as well as other members of the public. For more information on coordination between the County and other agencies please refer to Appendices A, B, D, and G.

### **PRIMARY PLANNING GUIDELINES**

The Board and the Resource Use Committee recognize that it is their duty and obligation to enter official land use planning activities and to participate equitably and fully with the federal and state management agencies.

In accordance with state and federal laws regarding land use planning and the protection of private property interests, the Board and the Resource Use Committee seek to maintain and to revitalize the various multiple uses of the state and federally managed lands. To that end, the

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Board adopts this Resource Use Plan, including General Planning Guidelines and Management Actions regarding the various multiple uses of state and federally managed lands in Carter County.

The Resource Use Committee and the Board have developed a process to coordinate in advance with the federal and state agencies regarding any proposed actions which will alter or impact lands in Carter County. This includes, but is not restricted to, private property rights and private property interests, the economic stability and historically developed customs and culture of the county, the provisions of this Resource Use Plan and the Carter County Comprehensive Plan or Growth Policy. Such agencies are requested, prior to taking official action or issuing a report on a proposed action, to coordinate with the Board. The agencies may accomplish this in part by providing the Board or its agents, in a timely manner, with the proposed purposes, objectives, and estimated economic impacts of such action.

The Board and the Resource Use Committee are committed to a positive planning process with federal and state agencies. The County will equitably consider the best interest of all of the people of Carter County and the State of Montana in the use of state and federal lands.

Carter County commits itself to seeing that all decisions on natural resources affecting the county will be guided by the following principles:

1. To maintain and revitalize the concept of multiple use on all lands in Carter County.
2. The protection of private property rights and private property interests, including investment backed expectations.
3. The protection of local historical customs and culture.
4. The protection of the traditional economic structures in the county that form the base for economic stability.
5. The opening of new economic opportunities through reliance on free markets.
6. The protection of the rights to the enjoyment of the natural resources of the county by all citizens.

The Carter County Board believes that resource and land use management decisions made in a coordinated manner by federal and state agencies and county officials will not only maintain and revitalize the multiple use of all lands in Carter County but will also enhance environmental quality.

The General Planning Guidelines set out in this plan present the standards of law, fact, and planning by which the Board will be guided in its official capacity as the executive authority of the county. The Guidelines include constitutional and statutory standards for land management by which the Resource Use Committee and the Board will be guided.

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This Plan is only the commencement of the planning process in Carter County. The process itself is ongoing and will require the Resource Use Committee and the Board to become involved with all stages of the resource process followed by federal and state agencies. These stages will include plan development, implementation, monitoring, and evaluation.

### **CONSTITUTIONAL PRINCIPLES AND PRIVATE PROPERTY**

The U.S. Constitution created a form of government characterized by:

1. Limited powers granted to the federal government.
2. Separation of those limited powers into legislative, judicial and executive branches.
3. Creation of a process where the branches act to check and balance the power of the other branches.

The Resource Use Committee, the Board and the people of Carter County accept, support, and sustain the Constitutions of the United States and the State of Montana. The Constitution of the United States, Article 1, Section 8, clauses 17 and 18 limits the authority of the federal government to own only specific lands.

1. **GOAL:** That all lands in Carter County be managed in coordination with the Board, its representatives, and thereby the citizens of this county.
2. **GOAL:** Reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding fathers.
3. **GOAL:** Protect private property and private property rights and promote the continuation of private economic pursuits.

**Objective 3A:** Protect private property rights.

**Objective 3B:** Protect local customs and culture.

**Objective 3C:** Maintain traditional economic structures through self-determination.

**Objective 3D:** Open new economic opportunities through reliance on free markets.

**Objective 3E:** Enhance environmental quality.

**Objective 3F:** Protection and preservation of privately owned land is desirable in Carter County.

**4. GOAL:** Ensure Due Process.

**Objective 4A:** Notice

**Objective 4B:** Opportunity to be heard

**Objective 4C:** The right to cross examination

**Objective 4D:** Disclosure

**Objective 4E:** Findings of fact

**Objective 4F:** Conflicts of interest and the appearance of conflict or impropriety

**Objective 4G:** Prompt decisions

**Objective 4H:** Records of proceedings

**Objective 4I:** Ground rules for fair play

**Objective 4J:** Substantive due process

**LAND TENURE, DISPOSITION, ACQUISITION, AND USE**

Sixty-five percent of the land in Carter County is private. It is this land that comprises the County tax base that must support most County services. The Board recognizes that land is essential to local industry and residents.

- 1. GOAL:** That land tenure adjustments for any government agency should provide for no net loss of private land, private property rights and interests including investment-backed expectations, or loss of property tax revenue to Carter County.

**Objective 1A:** Exchanges of government land with private landowners to adjust property lines for improvement of management of either or both will be sought.

**Objective 1B:** Isolated tracts of state and federally managed lands, which could be better and more efficiently managed by the private sector, will be identified and recommended for sale or trade.

- 2. GOAL:** That the design and development of all federal and state land dispositions and acquisitions, including land adjustments and exchanges, be carried out to the benefit of the residents of Carter County.

**Objective 2A:** That the County suffers no net loss in tax revenue.

**Objective 2B:** That private property interests are protected and enhanced.

**Objective 2C:** That citizens of Carter County will suffer no adverse aggregate economic impacts.

**Objective 2D:** That all government entities investigate and attempt to increase local economic development by increasing the amount of privately controlled land within the county.

**Objective 2E:** All governing bodies investigate and attempt to increase opportunities for local economic development by increasing the private use of all lands within the county.

**Objective 2F:** Federal and state land agencies should not acquire any private lands or rights in private lands within Carter County without first ensuring compliance with the items listed above.

**Objective 2G:** Federal and state-managed lands that are difficult to manage, or which lie in isolated tracts should be considered for exchange or sale.

**Objective 2H:** The general public and the Carter County Board of Commissioners should be notified of, consulted with, and otherwise involved in all federal and state land adjustments in Carter County, as discussed in Appendix D, Framework for Coordination.

*Policy 1: The County should have the opportunity to investigate and evaluate all proposed changes to determine if the proposal is in the best interest of the County. Further, the County and other government agencies should collaborate and coordinate with each other in implementing proposed planning activities.*

*Policy 2: The County will have the opportunity to collaborate, coordinate and make recommendations on proposed public or private land withdrawals for hazardous and non-hazardous waste storage, as well as the types of such waste.*

**Objective 2I:** As discussed herein, before federal and state land agencies change land use, impact studies on the proposed change should be conducted at the expense of the agency proposing the change, and mitigation measures should be adopted in coordination with Carter County. Impact studies should, as needed, address community stability, local custom and culture, grazing rights, flood prone areas, access, and other concerns identified as a concern to the local community.

## **CARTER COUNTY**

Carter County is in the most southeastern corner of Montana, adjacent to the South Dakota and Wyoming borders. Bordering Montana counties include Fallon, Custer, and Powder River. The county has a total area of 3,340.5 square miles (U.S. Census Bureau, 2023) and is the 15th largest county in Montana by total area. Carter County contains approximately 2,141,719 acres, with 65% privately owned and 35% owned by Federal, State, County, or Local Government agencies. (Montana Natural Heritage Program, 2024). The U.S. Bureau of Land Management is responsible for 24% of the federal lands in Carter County, while the U.S. Forest Service is responsible for the remaining 4% of federal lands. The Montana State Trust owns 7% of the land in Carter County. Medicine Rocks State Park is owned and managed by Montana Fish, Wildlife and Parks. Local government owns less than 1% of the land in Carter County. The region is characterized by rugged pine forested hills, rolling grasslands and hardwood draws. All water flows North into the Yellowstone or Missouri River system. There are only four paved roads in Carter County. Highway 7 runs North from Ekalaka. Highway 323 runs South from Ekalaka to Alzada. Highway 212 runs East and West across the southern end of the county and Highway 326 runs South of Alzada to Hulett Wyoming. There are no designated wilderness or roadless areas within the county.

The area was originally inhabited by various Native American tribes, including the Sioux, Crow, and Cheyenne. European explorers, such as the Lewis and Clark expedition, passed through the region in the early 19th century. The first permanent settlement in Carter County was established in the 1880s with the arrival of homesteaders. These settlers were primarily ranchers and farmers attracted to the fertile land and abundant grazing opportunities. The county was officially established in 1917 and named after Thomas H. Carter, a prominent Montana senator.

In the early 20th century, the discovery of coal and coal mining became a significant industry in Carter County. Several coal mines were established, bringing an influx of miners and their families to the region. The town of Ekalaka, the county seat, thrived during this time, with businesses, schools, and other infrastructure developing to support the growing population. Carter County's total population, according to Headwaters Economics' Economic Profile System, was estimated at 1,349 in 2021. Between 2010 and 2021, the county's population increased by 60 people or approximately 4.7% (Headwaters Economics, 2023).

Carter County faced its fair share of challenges over the years, including economic downturns and natural disasters like severe droughts and wildfires. Despite these hardships, the county has persevered and remains an important agricultural center, known for its cattle ranching and wheat farming. Today, Carter County is a close-knit community that values its history and natural resources, with a strong commitment to preserving the area's rural character and proud heritage (Historic.one, 2023).

Ekalaka, the county seat, is the only incorporated community in the county. Other communities that are not incorporated include Albion, Alzada, Belltower, Boyes, Capitol, Hammond, Mill Iron, Ridge, and Ridgeway.

Agriculture plays an important role in the economy of eastern Montana. As of 2022, according to the U.S. Department of Agriculture's Census of Agriculture, a total of 1,682,561 acres, or 78.6%, of the land in Carter County is used for agricultural purposes (U.S. Department of Agriculture, 2022). Approximately 13% of agricultural land is used for cropland, such as hay, wheat, and dry edible peas, and 86% of agricultural land is pastureland for livestock, mostly cattle and sheep. with 82.5% of the land in Carter County being dedicated to the industry. According to data published by the U.S. Department of Agriculture, agricultural land in Carter County is comprised of 323 farms, with 1,767,723 acres in farmland. The market value of agricultural products sold totaled over \$70 million, and government subsidies to farm operators funded an additional \$7 million (U.S. Department of Agriculture, 2022). Government appropriations include such items as crop insurance premiums and disaster, conservation, and commodity subsidies.

Carter County ranks 23rd in the State of Montana for total agricultural products sold, and 7th in the State for livestock, poultry, and associated products sold. These numbers provide evidence that the agricultural industry has an impact on the overall economic health of the County and its residents. Information detailing the number of farms and total acres of farmland in Carter County can be found in Table 4.3 in Appendix C.

Carter County ranked lowest among Montana's 56 counties with its 2.2% unemployment rate in December 2023. This rate was lower than the State unemployment rate of 3.8% for that same time period (MT Department of Labor & Industry, 2023). In general, the unemployment rate in Carter County has remained relatively stable. The unemployment rate for 1996, at 1.6%, was the lowest recorded, with the highest at 4.0% in 2005 (MT Department of Labor & Industry, 2023).

Cropland consists of mainly small grains (barley, and wheat) which are produced throughout the county. Pasture is used throughout the county for livestock grazing for sheep and cattle, with hay being produced on native, tame grasses or alfalfa. Woodland and forest trees are predominantly Ponderosa Pine, with a number of different hardwoods in the creeks and draws throughout the county. The Medicine Rocks State Park consists of 220 acres of sandstone formations in the North part of the county.

Appendix C, Tables 4.1 and 8.1 provide an illustration of Land Ownership and Land Cover acres. The Great Plains Mixed Grass Prairie system that comprises 42% of Carter County covers much of the eastern two-thirds of Montana, occurring continuously for hundreds of square kilometers, interrupted only by wetland/riparian areas or sand prairies. Soils are primarily fine and medium-textured. The growing season averages 115 days, ranging from 100 days on the Canadian border to 130 days on the Wyoming border. Climate is typical of mid-continental regions with long severe winters and hot summers (Natural Heritage Map Viewer, 2024). Appendix C, Table 8.2 provides a Climate Summary.

### **CUSTOMS AND CULTURE**

Tourism helps fuel Carter County's economy. Visitors from both in state and out of state travel to Carter County to visit Medicine Rocks State Park to enjoy activities such as photography, hiking, and wildlife viewing. The park, which offers 12 campsites, is a haven for mule deer, antelope, woodhouse toads, and sharp tailed grouse.

The Carter County Museum is one of fourteen museums on the Montana Dinosaur Trail. Housed in a former automotive garage, the museum is Montana's first county museum and the first to display dinosaur fossils. The museum hosts several programs and events throughout the year. Since 2013, visitation at the Carter County Museum has increased over 500% from 1,000 to 5,844 annual visitors as many travel to Ekalaka to see the world-renowned dinosaur, American Indian, local history, and natural history displays. One of the standout events offered by the museum is the annual Dino Shindig, held at the end of July, which attracts paleontologists and dinosaur enthusiasts from around the world. The Dino Shindig has been named Montana's Event of the Year by Montana's Office of Tourism and Development. In 2019, over 900 visitors attended the event and visited the museum during the week leading up to the Shindig (Sanford, 2023). The museum volunteer corps has grown to 40 people, including students from Montana State University and Johns Hopkins University (GuideStar, 2023). In 2023, the museum reached a total audience of 144,515 people through on-site programming and educational outreach (GuideStar, 2023). Of that number, 5,502 visited the museum in person, including 3,487 non-residents.

Hunting, fishing, and trapping also remain popular tourist activities in Carter County. The potential for conflict between these users and those residents who make their living on the land is great. Cooperative efforts on both sides have kept the conflict to a minimum. Diverse recreational activities have resulted in uses that directly affect open-space issues in Carter County.

Private property rights and interests are important to the residents of Carter County. Private ownership and the incentives provided by that ownership is a driving force behind the culture and lifestyle of the county.

## **ECONOMICS**

Carter County's population is projected to steadily increase until it reaches its peak in 2030, at which time it will begin decreasing until at least 2040. Growth in population only reinforces the need for continued economic development, the attraction of new industry, and increased opportunities for tourism. Promoting the opportunity to enjoy a rural lifestyle, while still earning competitive wages, will attract more people to the area and continue to bolster the economy.

One way to evaluate the economic sectors that deserve the most focus when working to improve the economy of Carter County is to evaluate the number of jobs in each industry, as identified in the Carter County Growth Plan, and compare that to the number of jobs in each industry within the State of Montana. Base industries are those that have a higher percentage of the workforce locally as compared to statewide percentages, and expansion of these industries will result in additional growth of the overall economy. Likewise, industries that have a lower percentage of the workforce locally as compared to statewide percentages represent areas that may offer new opportunities for economic development strategies.

Expansion of the agriculture/forestry/fishing/hunting/mining and construction industries

are likely to result in increased economic growth for Carter County. Additionally, the manufacturing, wholesale and retail trade, information, finance/insurance/real estate, professional/scientific/management, education/health care/social assistance, and arts/entertainment/recreation/accommodation/food industries present new opportunities for economic development strategies.

A primary purpose of this Plan is to foster cooperation and coordination between federal and state management agencies, other counties and Carter County. These interests include but are not limited to grazing, farming, timber, mining, recreation, wildlife and all other activities related to, and reliant upon, the availability of natural resources on federal, state managed, and private lands within their respective jurisdictions.

This plan is a dynamic document, changing as more information becomes available and new situations arise. Economic and demographic data essential to the Carter County Growth Policy and Resource Use Component will be included in later updates. This data should include both current and historical data for the past decades and should give an indication of the trends. Data to be added may include:

1. Total personal income by major component (industry).
2. Full-time and part-time employment by major industry.  
The remoteness of Carter County and the Town of Ekalaka, limit employment opportunities, and limited goods and services all influence the overall economy of the area. Of the total County population of 1,349 residents, 1,113 are over the age of 18 and 673 are currently working. Agriculture-related workers make up 48.4% of the employed labor force, 10.8% are employed in the construction field, and 9.7% are employed in education, health care, and social assistance positions.

The Town of Ekalaka reports its primary industries as construction and education, health care, and social assistance, followed by arts, entertainment, recreation, accommodation, and food; public administration; and retail trade.

3. Transfer payments by major component (industry).
4. Farm income and expenses.
5. Total population and population by age categories.
6. Households by type.

For an overview of the information, see Appendix C, Tables 6.1, 6.3 and 6.4.

Due to the lack of population, industry, and employment it is critical that the County, which has a large amount of state and federal land in its land base, continues to receive Payment In Lieu of Taxes (PILT). This form of payment from the federal government that takes the place of full tax payment is subject to congressional approval. The failure of this program without a viable

replacement would be devastating to the operation of Carter County's government.

Counties and states are not allowed to tax the federal lands within their boundaries. The federal government has several mechanisms to reimburse local government for the loss of taxes. It is important to know the amount of federally owned land and the kind and amount of reimbursement that local governments will receive. More importantly, the County must understand how activities and management actions on these federal, state, and privately controlled lands impact the economic underpinnings of the local community. Payments to support local communities are derived from federal lands through the following mechanisms:

- 25% of Forest Reserve Fund
- Payments in Lieu of Taxes (PILT)
- Taylor Grazing Act Section 3 and Section 15
- Refuge Revenue Sharing Act

For more detailed information on federal payments to local communities please refer to Appendices A and B.

Carter County is directly affected by management activities on the federal, state and private lands. Recreation, livestock grazing, and timber production are the primary resource areas that provide income and promote community stability. (Forest monitoring and evaluation report 1990).

Therefore, it shall be the policy of Carter County to:

1. **GOAL:** Protect agricultural land and promote the continuation of agricultural pursuits.
  - Objective 1A:** Protect private property rights.
  - Objective 1B:** Encourage reliance on self-determination.
  - Objective 1C:** Ensure open market conditions.
2. **GOAL:** Recognize and manage to protect the private rights and interests in irrigation and water development structures on public lands.
3. **GOAL:** Develop and implement an economic policy on the role of public lands in relation to reviving and supporting economic stability for Carter County.
  - Objective 3A:** Encourage research activities to address rural economic issues.

**Objective 3B:** Enhance the ability of the county government to better serve the county.

**Objective 3C:** Create committees and cooperative State Grazing Districts to effect greater county involvement in public land planning processes.

**Objective 3D:** Encourage research activities to address rural economic issues and questions.

**Objective 3E:** Equal application of commodity user fees for all resource users on the state and federal lands.

**Objective 3F:** Increase the capacity for public land resources to provide more economic return for rural economies.

**Objective 3G:** Increase the number of adequate broadband T1 lines available for government, business, and non-profit organizations.

**4. GOAL:** No net loss of private lands.

**Objective 4A:** Identify and implement mechanisms that preserve or increase the amount of private land in Carter County to enhance the tax base and encourage rural development.

**Objective 4B:** Increase the capacity for public land resources to provide more economic return for rural economies.

**5. GOAL:** Develop programs with assistance to enhance the effectiveness of local government in the public land planning process and the effects resource uses have

**Objective 5A:** Work toward reducing state and federal red tape to facilitate development and multiple use of public lands in a cost-effective and wise manner.

**6. GOAL:** Recognize the importance of agricultural production to the economic well-being of Carter County.

**Objective 6A:** Maintain the current amount of rangeland vegetation, by actively reversing the colonization of rangelands by conifers and weeds.

### **COMMUNITY STABILITY**

Historically the custom and culture of Carter County is a story retold in many western counties. The settlement of the county is a history of the livestock, ranching, logging, and wildlife. It was led by hardy individuals willing to work and develop the resources of the land to bring forth a community. The settlement of the county is based on the beneficial use of the land.

The people of Carter County have traditionally earned their livelihood from activities associated with natural resources. The economy of the county was in the past, and is today, dependent upon the availability and utilization of natural resources. Directly or indirectly, the majority of the people employed in Carter County are dependent upon ranching and farming, forest production, mining, recreation, and other activities related to the availability of natural resources.

Much of the land producing the resources critical to the economy of Carter County is either managed by Federal or State agencies or is vitally affected by land management policies of federal or state agencies. The county economy is greatly dependent on businesses operating on federal and state lands. These include timber harvesting, mining, livestock grazing, other commercial activities, and recreation. These businesses are the base for economic stability of the county. They are vital to the effective use of private land in the county. Because less than two-thirds of the land in the county is privately owned, effective use of that private land is greatly dependent on the management style and technique for the federal- and state-managed land and water.

Recognizing the critical tie between use of the federal and state lands and the economic stability of the county, The Board will actively and positively work to provide a voice for individual citizens, and for local communities in planning the future of the county. For more information on the ongoing resource planning process, please refer to Appendix D, F, and G.

### **LIVESTOCK GRAZING**

Agricultural production in Carter County is necessary for the livelihood and well-being of all its citizens. The County must strive to protect our ranching heritage, and the vital natural resources needed to keep ranching families in business.

Livestock grazing is one of many management tools that may be used to maintain or enhance the range resource. Improving the range resource through livestock grazing benefits watersheds, wildlife, water quality, fire protection, and recreation as well as providing needed forage for livestock production.

- 1. GOAL:** Continue agriculture use on federal and state lands consistent with historical practice.

**Objective 1A:** Retain the use of public lands for grazing as set up by the Taylor Grazing Act.

**Objective 1B:** Recognize and protect all private property rights.

**Objective 1C:** Provide an environment for sustainable working ranches.

**Objective 1D:** Support the agriculture industry.

**Objective 1E:** Provide better management of lands and land improvements on livestock range that is also key to big game habitat.

**Objective 1F:** Support the tax base of the county.

**Objective 1G:** Utilize a coordinated resource management and planning approach to ensure involvement of all interests.

**Objective 1H:** Enhance and protect riparian areas in an economical sound fashion

**Objective 1I:** Encourage consistent management of wildlife populations.

To accomplish these goals and objectives, Carter County proposes the following:

*Policy 1: Use sound management practices, and the development of innovative grazing plans while educating the public on the benefits of grazing public lands.*

*Policy 2: Have in place, a rapid response process to address land resource issues.*

*Policy 3: Work cooperatively with the involved ranchers, and other interested parties to address resource concerns on a site-specific basis.*

*Policy 4: Use prescribed fire and other approved methods to control sagebrush, weed and tree encroachments, and to enhance, maintain or increase current grazing levels.*

*Policy 5: Maintain or increase forage available with structural improvements such as cross fencing, water spreading and water placement.*

*Policy 6: Use deferred entry or rest rotation along with structural improvement such as fences or cattle guards.*

*Policy 7: Use a practical, economical and common-sense approach to riparian management.*

*Policy 8: Support the use of temporary electric fence, livestock collars, herding, or other evolving technologies to enhance, maintain, or increase grazing management, where appropriate.*

2. **GOAL:** Manage rangelands to maintain and enhance desired plant communities, and benefit watersheds, wildlife, water quality, recreation and livestock grazing.

**Objective 2A:** Comply with all applicable state and federal laws, including the Public Rangelands Improvement Act.

**Objective 2B:** Encourage effective planning and management to maintain and enhance desired plant communities.

*Policy 1: Encourage development of a management plan for each specific allotment.*

**Objective 2C:** Encourage the inclusion of all grazing improvements, such as water development, pine/juniper/sagebrush control, re-seeding, fencing, salting plans, herding plans, and grazing systems in Allotment Management Plans and allow for the flexibility and updating of the plan during the ten-year period.

**Objective 2D:** Encourage utilization of standards and guidelines that are scientifically proven in our area or areas similar in climate and geography.

**Objective 2E:** Encourage decision-making as to improvements on an allotment basis. Decisions should be made on an allotment basis, because they are an integral part of the use of State leases, private leases, private lands, other allotments, and the overall operation of each ranch enterprise.

*Policy 1: Encourage compliance with the multiple-use concept mandated by statutes. No individual resource value will be given priority in vegetation management decisions. Congress has directed that the federally managed rangelands be managed, maintained and improved "so that they become as productive as feasible for all rangeland values." 43 U.S.C. §1901 CO) (2). In order to carry out the Congressional intent it will be necessary that the Bureau of Land Management "inventory and identify current public rangeland conditions and trends." 43 U.S.C. § 1901 Co) (1). All planning efforts will adhere to the careful and considered consultation, coordination and cooperation requirements established by Federal statutes. See 43 U.S.C. § 1701 (a) (2); §1712 (c) (9); §1752 (d).*

**3. GOAL:** Encourage participation in meaningful coordination between Carter County and all federal and state land management agencies.

**Objective 3A:** Encourage appropriate compliance with all federal and state statutes.

**Objective 3B:** Encourage county actions to preserve, support, and increase the county tax base.

**Objective 3C:** Develop and encourage programs to enhance the effectiveness of local government in the public land planning process for grazing.

**Objective 3D:** Allow for allotment management planning that will utilize a coordinated resource management and planning approach to ensure grazing on and state lands in the future.

*Policy 1: Encourage mechanisms to allow subleasing grazing rights for livestock grazing purposes only on state or federal ground.*

*Policy 2: Encourage mechanisms to allow flexibility of grazing allotments or grazing lease agreements.*

- 4. GOAL:** Enable the Carter County Commissioners to take an active role by responding in writing to any allotment management plans. (AMP's)

**Objective 4A:** Ensure County participation and coordination on every agency decision affecting the county.

**Objective 4B:** Have written documentation recorded on behalf of the county showing the comments describing issues of importance to the county.

**Objective 4C:** Support the county tax base.

**Objective 4D:** Review federal and state agency plans and regulations to ensure they are consistent with the growth policy for Carter County.

**Objective 4E:** Encourage landowners, permittees, leasees to set up rangeland monitor plots to document range trends

**Objective 4F:** Encourage creation of a grazing database that determines where the grazing permits are located in the county and show the condition of those areas.

**Objective 4G:** Develop programs to enhance the effectiveness of local governments in the public land planning process and promote good forest management, riparian management, and grazing management.

### **IRRIGATION AND AGRICULTURE**

Irrigated agriculture is the major contributor to the economic base in the state of Montana, though not very critical currently in Carter County. Alfalfa, grass and grain hays, livestock pasture, and small grains constitute the majority of crops in Carter County. These agricultural crops are integral to the production of livestock in Carter County, and to the stability of the custom, culture, and economy of the county.

- 1. GOAL:** Productive watersheds must be maintained for the preservation of irrigated agriculture.

**Objective 1A:** Maintain healthy forests for productive watersheds.

2. **GOAL:** Water rights and irrigation easements are to be protected.

**Objective 2A:** Encourage that the re-adjudication process protects existing water rights.

3. **GOAL:** Maintain water storage and conveyance structures.

### **MANAGEMENT OF VEGETATION**

The Taylor Grazing Act and the Federal Land Policy and Management Act mandate maintenance and improvement of vegetation on the federally managed lands to provide forage for livestock, and forage and habitat for wildlife. The Public Rangelands Improvement Act of 1978 states (43 U.S.C. § 1901) that: [federally managed lands were producing] “less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits.” Further, in § 1901, that: [unsatisfactory conditions on public rangeland] “prevent expansion of the forage resource and resulting benefits to livestock and wildlife production.”

Congress also found that such conditions preventing an expansion of the forage resource and other unsatisfactory conditions on the public rangelands “may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes.”

In order to eliminate such conditions, Congress called for intensive planning and improvement of the condition of the federally managed rangelands so that “they become as productive and feasible for all rangeland values.”

### **JUNIPER, PONDEROSA PINE, SAGEBRUSH AND WEED ENCROACHMENT**

The expansion of sagebrush, ponderosa pine, and weeds over many thousands of acres of range in Carter County threatens its multiple use. Without a significant effort to control this invasion and expansion, watersheds, wildlife, water quality, recreation, and grazing will be damaged.

1. **GOAL:** Encourage and promote the protection of the grassland resource from the invasion and expansion of sagebrush, weeds, and Ponderosa Pine.

**Objective 1A:** Participate in the review of and encourage the inclusion of control measures for woody species in grassland management plans.

**Objective 1B:** Encourage the implementation of county weed control policies in grassland management plans.

**Objective 1C:** Continue the county commitment to funding weed control programs in Carter County.

### **WATER RIGHTS**

All existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed by the Montana Constitution. "Existing water right" means a right to the use of water that would be protected under the law, as it existed prior to July 1, 1973.

1. **GOAL:** Water rights established historically and beneficially used by the citizens of Carter County including but not limited to, the purposes of agriculture (irrigation and stock water) domestic use, industrial use, mining and power uses are recognized as private property rights and are to be protected as such.

**Objective 1A:** Any new or additional development of surface water or groundwater after June 30, 1973, will be consistent with Montana laws and the Montana Water Use Act of 1973.

2. **GOAL:** Allocation of water resources in Carter County are governed by applicable Montana laws and the Prior Appropriation Doctrine.

**Objective 2A:** Any land use inventory, planning or management activities affecting water resources in Carter County, either directly or indirectly, is coordinated with local government and is consistent with the Resource Use Management Plan of Carter County.

**Objective 2B:** Use of water resources in Carter County is consistent with local culture and community stability with particular emphasis on the economic stability of the community.

**Objective 2C:** Recognize that water used for recreation, fish, and wildlife purposes provide economic benefit to Carter County although these uses are not historically recognized as historic water rights or "existing water rights". These uses are generally non-consumptive uses of water.

### **DITCHES, DIKES and CANALS**

Ownership of water rights and ditch water rights are distinct property rights.

1. **GOAL:** Ditch easements are recognized as property rights and will be protected as such.

**Objective 1A:** Encourage recognition and acknowledgement of the concept that ditch easements include owner rights to enter, inspect, repair and maintain a canal or ditch.

**Objective 1B:** Implement and encourage the implementation of policies that limit encroachment upon or impairment of easements for canals or ditches, without the permission of the easement owner.

**Objective 1C:** Adopt and implement policies encouraging the owners of ditch easements to be reasonable in the use of their easement.

## **WATER AND HYDROLOGY**

Principle drainages in Carter County flow generally northward to north northeastward, and consist of the Little Missouri River, Box Elder, and O’Fallon Creeks, as well as many smaller creeks which discharge to the Powder River a few miles west of the county line. The fairly rough terrain contributes considerably to the area’s climatic features, particularly between hills or mountain ranges and flat valley bottoms. The more hilly and mountainous areas receive more moisture, on average throughout the year, than the valley floors. The variations are large enough to have importance but are less pronounced than in the more mountainous western half of Montana. Almost all of the drainage courses are of the intermittent type, having periods of extreme runoff occurring during the spring months and abnormal flows in summer months, caused by heavy thunderstorms.

1. **GOAL:** Productive watersheds must be maintained for water quality.

**Objective 1A:** Maintain healthy forests for productive watersheds.

**Objective 1B:** Support the Clean Water Act’s focus of achieving fishable and recreational water quality standards.

## **WATER QUALITY**

1. **GOAL:** The Montana Water Quality Act (Title 75, Chapter 5, Mont. Code Ann.) provides the authority and standards for water quality in Carter County.

**Objective 1A:** Any land use inventory, planning or management activities affecting point or non-point sources and water quality in Carter County, either directly or indirectly, is coordinated through local government and is consistent with the Resource Use Management Plan of Carter County.

**Objective 1B:** All management plans and land use practice modifications proposed by either state or federal agencies premised on water quality issues are coordinated through local government and are consistent with the protection of private property rights to include but, not limited to, Animal Feeder Operations and Confined Animal Feeder Operations.

**Objective 1C:** To recognize the economic and social benefits of customary land use activities in Carter County.

### **FLOODPLAINS AND RIVER TERRACES**

There are no rivers that fall within the Nationwide Rivers Inventory in Carter County. According to the National Park Service, the Nationwide Rivers Inventory consists of more than 3,200 free-flowing river segments in the U.S. that are believed to possess one or more “outstandingly remarkable” values.

Major streams in semi-arid Carter County include Box Elder Creek and the Little Missouri River. Carter County consists of six sub-basin watersheds: Boxelder, Little Powder, Lower Belle Fourche, Lower Powder, O’Fallon, and Upper Little Missouri (Montana State Library, 2024). None of these watersheds are part of the Montana Watershed Plan.

#### **1. GOAL:** Continue to reduce property damage in the floodplain.

**Objective 1A:** Consider installation and maintenance of floodplain protection structures.

**Objective 1B:** Encourage the use of upstream storage structures and water retention, through a combination of:

1. On stream Storage
2. Off stream storage
3. Structural storage
4. Non-structural storage

**Objective 1C:** Develop accurate and detailed floodplain mapping in consultation with landowners.

**Objective 1D:** Discourage construction of structures in floodplain areas and encourage flood proofing of structures situated in floodplain areas.

### **WETLANDS**

Wetlands help regulate water levels within watersheds; improve water quality; reduce flood and storm damage; provide important fish and wildlife habitat; and support hunting, fishing, and other recreational activities. Wetlands are most common on floodplains along rivers and streams (riparian wetlands). They also occur in isolated depressions surrounded by dry land (for example, playas, basins, and “potholes”), along the margins of lakes and ponds, and in other low-lying areas where the groundwater intercepts the soil surface or where precipitation sufficiently saturates the soil (vernal pools and bogs). Wetlands include marshes and wet meadows

dominated by herbaceous plants; swamps dominated by shrubs, and wooded swamps dominated by trees. Wetlands sites may provide critical habitat needs for many species, and they support a greater concentration of wildlife species, recreation, and other activities than any other type of location on the landscape.

**1. GOAL:** Develop a cooperative approach to wetland issues.

**Objective 1A:** Work with water, wildlife agencies, agriculture, and landowners to achieve acceptable solutions and mutual benefits, both economic and otherwise, on these issues.

**Objective 1B:** Participate in the process to develop a consistent definition of wetlands and lands adjacent to wetlands.

**Objective 1C:** In developing a wetlands definition, attempt to include the following components:

1. Define wetlands as naturally occurring areas of mainly hydric soils that support hydrophytic vegetation due to the wetland hydrology.
2. Define hydric soil as a soil that in its natural state is saturated, flooded or ponded long enough during the active growing season to have predominantly anaerobic conditions at the surface.
3. Define hydrophytic vegetation as predominance ( $\frac{2}{3}$ ) of obligate wetland plants and facultative wetland plants.

### **RIPARIAN AREAS**

Riparian areas are the zones bordering lakes, reservoirs, potholes, springs and seeps, wet meadows, vernal pools, and ephemeral, intermittent, or perennial streams. They are of prime importance to water quality, water quantity, stream stability, and fisheries habitat. Abundant water, forage, and habitat attract a proportionately greater amount of use and conflict than their small area would indicate. They are vital to the livestock grazing industry, mining, and many are also well suited for development as high-quality agricultural farmland.

**1. GOAL:** Develop a coordinated approach to establishing riparian management plans, which include all uses of the area and impacts and influences.

**Objective 1A:** Utilization allowances should be designed to enhance the range resource and provide an accurate and verifiable system for comprehensive monitoring and evaluation of the entire range resource in pasture/grazing rotation system. Utilization allowances, monitoring, and evaluation systems should not make the mistake of measuring one area while excluding other areas of the range resource.

**Objective 1B:** Carter County encourages the development of riparian management plans in concert and coordination with landowners, ranchers, and the appropriate state and federal agencies.

**Objective 1C:** Develop a consistent definition of riparian areas.

The county shall encourage defining riparian areas as areas of land directly or indirectly influenced by permanent water. Riparian areas have visible vegetation or physical characteristics reflective of permanent water influence. Excluded are such sites as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.

**Objective 1D:** Coordinate with other agencies any designation of Wild and Scenic Rivers, and other policies regarding riparian management in Carter County.

**Objective 1E:** Coordinate with other agencies and private entities managing land, waterways, and wetlands containing Threatened or Endangered species

**Objective 1F:** Carter County should receive notification of all state, regional, interstate, and federal actions that have any impact on the water of the county prior to such actions being initiated. It shall be the policy of the county to comment on these actions where appropriate.

*Policy 1: Develop appropriate Memorandums of Understanding to implement the coordinated management of riparian areas.*

*Policy 2: The County should work to coordinate proposed actions with this plan prior to adoption and implementation.*

**2. GOAL:** Develop a county water use policy to ensure water quantity and water quality.

**Objective 2A:** Ensure that such policies do not unreasonably impact water users within the county.

**Objective 2B:** Review all water policies periodically to determine that they are appropriate and adequate.

**Objective 2C:** Engage the County in the development, planning, and the management of the water resources of the county.

**Objective 2D:** Maintain healthy forests to ensure productive watersheds.

**Objective 2E:** Encourage cost sharing or cost reimbursement of costs incurred by permittees for riparian protection or improvement.

## **FIRE MANAGEMENT**

Headwaters Economics produces a report in cooperation with the U.S. Forest Service that analyzes wildfire risk by County. The report considers wildfire risk and exposure, wildfire susceptibility, and land ownership. A report downloaded February 1, 2024, shows that populated areas in Carter County have, on average, greater risk of wildfire than 91% of counties in the state while risk to homes is 89% greater. 74% of homes in the county are exposed to wildfire from direct sources, such as adjacent flammable vegetation and 26% are exposed to wildfire from indirect sources, such as embers or home-to-home ignition (Headwaters Economics, 2024). Fire protection is provided within jurisdictional boundaries of Carter County by the Carter County Rural Fire Department, Ekalaka Volunteer Fire Department, and Alzada Volunteer Fire Department. The Carter County Rural Fire Department is staffed by volunteers and is primarily responsible for wildland fires. It is managed by the Carter County Sheriff's Office. The town fire departments each have a service area of 20 to 75 miles surrounding the town. All fire protection agencies are served by the 911 Dispatch Center in Baker.

When the County's Comprehensive Capital Improvements Plan (CCIP) was completed in 2016, the Carter County Rural Fire Department expressed the need for cold storage capable of housing seven or eight fire trucks. A 50'x100' building was proposed. The Rural Fire Department is still in need of a building for cold storage, as well as a heated area for storage and maintenance of fire trucks.

The Rural Fire Department currently owns 20 Type 6 wildland engines, two fire tenders, and one road grader. The County reported having an adequate number of volunteers to staff the Rural Fire Department and having a fire mitigation plan in place.

Fire suppression will be guided by the need to achieve the highest level of protection for human safety and private property. The blanket fire suppression policy of the past has contributed to degrading of wildlife and plant communities in some areas. Fire suppression may be necessary in an area where fire would endanger human safety and private property or valuable vegetation that will support and expand multiple uses. The Carter County Fire Plan should be followed.

- 1. GOAL:** Encourage utilization of fire and fire suppression to support and expand multiple uses and achieve management goals.

**Objective 1A:** Encourage utilization of fire suppression in areas where fire would endanger human safety and private property or valuable vegetation that will support or expand multiple uses.

**Objective 1B:** Reduce combustible fuel loads on private property close to and within the U.S Forest Service property.

**Objective 1C:** Participate in consideration of a “let it burn” policy for areas where invading and expanding shrubs and trees are reducing the value of the rangeland.

**Objective 1D:** Encourage development of policies for grazing prescription post-fire related to either wildfires or prescribed burns by utilizing area specific research.

**Objective 1E:** Encourage the adoption of the following policies by regulatory entities.

*Policy 1: Where grazing prescriptions are appropriate, they may include the year of the burn, light late season use in the year of the burn or moderate use in the year following the burn and utilizing local area research to help make a guide.*

*Policy 2: Post-fire grazing will not be limited when monitoring or evaluation produces relevant, accurate data that demonstrates grazing will not unduly harm the range.*

*Policy 3: In planning the prescribed burns, where feasible, market the renewable resources before burning.*

*Policy 4: Cooperation with Federal, State and Local authorities on all wildfire, prescribed burns and all fire closures within the county.*

### **NOXIOUS WEEDS**

Weed management is provided by the Carter County Weed Department as a public service, as it is a critical service for the agricultural and recreational industries in the County. The Weed Department employs a Weed Coordinator and an Administrative Assistant. Carter County also maintains a five-member Weed Board. The board’s purpose is to oversee the management and eradication of noxious weeds in Carter County. This includes a comprehensive County Weed Management Plan. The plan includes several coordinated cooperative interagency weed management plans. A current list of the noxious weeds found in Carter County can be found by contacting the Carter County Weed Department.

- 1. GOAL:** Eradicate to the extent possible noxious weeds within Carter County and minimize the potential for any new infestations that may become established and/or exist in the county.

**Objective 1A:** Support the Board of Commissioners as the weed authority for Carter County.

**Objective 1B:** Encourage an increase of the county weed budget and procure as much alternative funding for weed control as possible. Continue upgrading equipment and training for weed supervisor and crew.

**Objective 1C:** Increase ongoing programs to identify the location of all noxious weeds, and initiate management and control programs and eradication.

**Objective 1D:** Support the Federal Public Rangeland Improvement Act, which mandates cooperation in noxious weed control in order to improve unsatisfactory conditions of federally managed rangelands.

**Objective 1E:** Support cooperative agreements and if necessary, legal actions to assure the protection of all public and private lands within the county from Noxious weed invasion or occupation.

**Objective 1F:** Encourage the cleaning of any vehicles or equipment that have the potential to carry weed seeds.

**Objective 1G:** Support continued educational efforts to the public, producers, and agency professionals on newly arising problematic species, as well as early detection and rapid response procedures that can be utilized.

### **FOREST MANAGEMENT**

Custer Gallatin National Forest – Sioux Ranger District is located in the southeast corner of Carter County and the northwest corner of South Dakota. The area, which consists of hills or mesas of ponderosa pine rising above rolling grasslands, offers antelope, mule deer, white- tail deer, elk, and turkey hunting. It is also rich in archeological and paleontological resources, produces some oil, and supports a sizable domestic livestock population.

Sound science and common sense support the premise of active forest management on the forested lands in Carter County. Forest management practices should include a stable timber-harvesting program, which is essential to maintain healthy forest ecosystems and to provide employment and economic security to individuals and businesses in Carter County. Investment in equipment and technology cannot be made without economic stability. The Custer National Forest, the Bureau of Land Management, and the Montana Department of Natural Resources have the capability to demonstrate that proactive forest management can meet the needs of forest health, multiple use and economic stability.

Forest management should utilize the Multiple-Use/Sustained Yield Act of 1960. The Custer National Forest should be managed and administered for outdoor recreation, livestock grazing, timber harvesting, watershed protection and wildlife in the best interests of the American people. These resources should be maintained in perpetuity so that future generations will have the opportunity to use and enjoy them.

A management policy of no action, or arms-length management is unacceptable, irresponsible, and potentially disastrous. What is needed is a cooperative, hands-on, proactive approach to forest management that uses timber harvesting as a tool to accomplish overall forest health and to ensure a healthy and vibrant forest for current and future generations.

The Custer National Forest encompasses 89,384 acres.

1. **GOAL:** Achieve good forest health to ensure a healthy and vibrant forest for current and future generations including, but not limited to grazing, recreation and logging.

**Objective 1A:** Protect our environmental capital assets by managing mortality.

**Objective 1B:** Maintain and restore watershed health by demonstrating active forest management.

**Objective 1C:** Enhance and restore wildlife habitat.

**Objective 1D:** Promote the early detection and control of insect infestations.

*Policy 1: Encourage the creation of a model in Carter County that demonstrates how active management can meet economic needs, while maintaining and restoring watershed health.*

*Policy 2: Work with the Forest Service in partnership to help assess the state of our forest. Specifically define a “healthy ponderosa pine stand”.*

*Policy 3: Explore harvest methods that enhance wildlife habitat, through vigorous new growth and a natural mosaic.*

*Policy 4: Encourage the local manufacture and use of forest and forest by-products.*

**Objective 1E:** Encourage grazing districts within the Custer National Forest and BLM Lands.

**Objective 1F:** Encourage forest management that increases the overall fire protection plan.

**Objective 1G:** Encourage a forest management plan that effectively monitors, maps and controls the spread of noxious weeds

2. **GOAL:** Realize a sustainable and continuous supply of timber, forage, firewood, wildlife, fisheries, recreation, and water supplies utilizing multiple use on our public forest lands.

**Objective 2A:** Support the minimum areas required as single-use or restrictive-use designations.

**Objective 2B:** Support the maximum area of land possible to be excluded from single-use or restrictive-use designations, and that excluded land be available for active and sound management.

**Objective 2C:** Support local land managers on site-specific management decisions.

3. **GOAL:** Ensure stability in commodity-oriented and aesthetic based planning and decision-making processes. Recognize that both are essential to the well-being of Carter County.

**Objective 3A:** Provide stability within the ecological limits of the land so that companies will make needed investments that provide economic stability and jobs.

4. **GOAL:** Educate the public on the benefits of long-term sustained yield.

**Objective 4A:** Encourage public education on the reasons why both science and common sense support active management of our public lands.

**Objective 4B:** Educate public land managers, local school board officials, and County commissioners on the importance of public lands to local infrastructure maintenance.

### **PREDATOR CONTROL**

Carter County has a seven-member board overseeing the budget and means of controlling predatory animals within the boundaries of the County. The Predator Board hires contracted labor for aerial hunting and trapping.

1. **GOAL:** Control predatory animals and reduce livestock damage.

**Objective 1A: Maintain** trapping and aerial hunting as historic and environmentally sound methods of controlling predatory animals.

2. **GOAL:** Encourage controlling disease bearing vectors, predators and rodents that are a recognized threat to public health.

**Objective 2A:** Encourage protection of private lands bordering federal and state lands from predatory animals and property damage.

**Objective 2B:** This protection should fall within the boundaries of good husbandry and sound environmental restraints, not to exclude chemical control.

**Objective 2C:** Encourage retention of and expansion of the existing Carter County animal damage-control plan for protection of private livestock and crops.

**Objective 2D:** Government and private entities are encouraged to coordinate their pest control action and regulations with those of Carter County.

**Objective 2E:** Government and private entities are encouraged to prepare and implement plans for controlling predatory animals and rodents in accordance with recognized and proven husbandry practices.

### **WILDLIFE**

Hunting big game and upland game birds has been a traditional part of life in Carter County even before the first settlers. In the early days, hunting was a necessity for survival, and though today it is less essential, it still provides a food resource for many people. Carter County is renowned for its fine big game hunting and provides excellent hunting for county residents and visitors. Income for county residents is provided by such activities as employment as guides, selling supplies and providing meals and housing to hunters.

However, an increased population of wildlife in some areas of Carter County has taxed the available habitat, forcing the wildlife to move onto private property in large numbers, causing damage to private lands and thus a negative impact on private property.

1. **GOAL:** Maintain and improve wildlife habitat in order to sustain viable and harvestable populations of big game and upland game species, as well as wetland-riparian area habitat for waterfowl, furbearers, and a diversity of other game and non-game species.
2. **GOAL:** Coordinate with the Montana Department of Fish, Wildlife and Parks in consultation with all affected landowners, lessees, and permittees to develop specific Wildlife Management Plans.

**Objective 2A:** Wildlife Management Plans should include an annual headcount, population targets, harvest guidelines, special hunts to mitigate damage to private property, and guidelines for future site-specific management plans affecting upland, waterfowl and big game habitat.

**Objective 2B:** Wildlife Management Plans will be directed toward maintaining healthy balanced wildlife populations.

**Objective 2C:** Encourage rangeland enforced and forest studies to monitor wildlife relationships to the available habitat and the impact on vegetation enhancement projects by wildlife.

**Objective 2D:** Initiate cooperative studies with willing private landowners on wildlife damage to rangeland and related concerns.

**Objective 2E:** Reconcile wildlife population fluctuations related to both habitat conditions and other non-habitat impacts on reproduction and survival.

**Objective 2F:** Encourage development of a record keeping system tracking the incidence and disposition of wildlife damage on federal, state and private lands.

**Objective 2G:** Collaborate and coordinate with federal and state agency on plans and regulations regarding wildlife to ensure coordination with the County Comprehensive Plan.

**Objective 2H:** Encourage cooperation between federal and state agencies and private landowners to provide stable wildlife populations.

**Objective 2I:** The opening of access roads for late-season hunts when expected harvest quotas have not been met is especially important.

**Objective 2J:** The County will coordinate with the Montana Department of Fish, Wildlife and Parks in consultation with all affected landowners, lessees, and permittees to develop specific wildlife population targets, harvest guidelines, and late-season and special hunts when harvest guidelines are not met.

## **FISHERIES**

Fishing has been a traditional part of life in Carter County even before the first settlers. In the early days, fishing was a necessary part of survival, and though today it is less essential, it still provides a food resource for many people. Carter County provides excellent fishing opportunities for county residents and visitors.

### **1. GOAL:** Preserve and enhance the fisheries resource in Carter County.

**Objective 1A:** Prevent the spread of diseases such as whirling disease.

**Objective 1B:** Prevent the degradation of fisheries through overuse.

**Objective 1C:** Maintain healthy forests for productive watersheds.

### **2. GOAL:** Strike a balance between native and introduced species of fish where both are currently present in a fishery.

**Objective 2A:** If it is scientifically determined that introduced species are out competing, displacing, or harming the native fish populations, prior to taking any action, the economic impact on Carter County should be determined and considered.

**3. GOAL:** Minimize the conflicts between anglers and other resource uses.

**Objective 3A:** If overcrowding or overuse becomes a problem residents will be given preference over non-residents similar as to what is done for hunting.

### **RECREATION**

The Sioux Ranger District has numerous opportunities for dispersed recreation, including hiking, horseback riding, mountain biking, snowmobile riding, and cross-country skiing. There are no designated hiking trails, but most of the ridges are open and provide panoramic views. The Forest Service District has two stocked fishing ponds with populations of crappie, bass, and rainbow trout (USDA and U.S. Forest Service, 20).

- MCNAB POND AND CAMPGROUND (approximately 9 miles southeast of Ekalaka; a campground and stocked fishing pond that contains crappies, bass, and rainbow trout)
- CAPITOL ROCK NATURAL LANDMARK (approximately 47 miles southeast of Ekalaka; a massive sandstone remnant that resembles the Capitol Building in Washington, DC)
- TRI-POINT FIRE LOOKOUT TOWER (approximately 30 miles southeast of Ekalaka; a 60-foot steel tower built in 1936)
- MEDICINE ROCKS STATE PARK (approximately 11 miles north of Ekalaka; a series of natural rock formations considered sacred by local Native American tribes) Medicine Rocks State Park is comprised of weathered sandstone rock formations with a Swiss cheese look (Montana Fish, Wildlife & Parks, 2024). Outdoor activities at Medicine Rocks State Park include camping, boating, hiking, biking, cross-country skiing, and snowmobiling. Photography and wildlife viewing are also popular at the park where visitors can observe thousands of inscriptions on the sandstone pillars dating back centuries. The park is also a haven for mule deer, antelope, woodhouse's toads, and sharp tailed grouse. Twelve campsites are available on a first-come, first-served basis. The park has an elevation of 3,379 feet and spans 330 acres (Montana Fish, Wildlife & Parks, 2024).
- EKALAKA PARK AND CAMPGROUND (approximately 10 miles south of Ekalaka; located in the Ekalaka Hills, which consist of scenic drop-offs and cliff-edge views over the prairie)
- CAMP NEEDMORE (approximately 7 miles southeast of Ekalaka; a former Civilian Conservation Corps camp that now hosts 4-H and football camps, family reunions, hunters, and other visitors).

**LANTIS SPRING CAMPGROUND** A campground with campsites, and day use picnic sites, located in the Long Pines Unit, Sioux Ranger District, about 5 miles north of the Tie Creek Road.

Recreation and tourism are an important part of local business viability throughout the county. Recreational activities include camping, picnicking, hiking, fishing and OHVs in the summer; hunting in the fall; and snowmobile and cross-country skiing in the winter. Local businesses depend heavily on the influx of visitors to the federal and state lands.

- 1. GOAL:** Encourage a broad spectrum of recreation opportunities on the lands in Carter County.

**Objective 1A:** Provide opportunities for primitive recreational activities, non-motorized and motorized uses, camping and horseback riding uses.

**Objective 1B:** Encourage recreation and recreation activities that enhance and encourage opportunities for economic development in Carter County.

**Objective 1C:** Encourage recreational activities on the lands in Carter County that increase the capacity for federal and state land resources to provide more economic return to the county.

**Objective 1D:** Continue to seek out and expand upon cooperative efforts with interested user groups

**Objective 1E:** Determine on status maps where the areas of interest for recreation are located.

**Objective 1F:** When notified that a planning or decision-making effort is beginning, the County should submit comments in writing, describing issues they need to have addressed in support of the County.

*Policy 1: It shall be the policy of Carter County to consider, review, and comment upon all draft plans and environmental impact statements affecting land in Carter County.*

- 2. GOAL:** Encourage recognition of the social, culture, and economic significance of recreation in the region, and encourage implementation of policies that will insure the viability of various recreational opportunities.
- 3. GOAL:** Encourage implementation of plans and programs that provide a balance of motorized and non-motorized summer recreational opportunities in Carter County and southeastern Montana.

## **ENERGY AND MINERAL RESOURCES**

There are 11 active oil and gas wells in Carter County, although none of the gas wells have been producing since 2013. Annual oil production for Carter County for the years 2013-2023 is illustrated in Figure 6.5 in Appendix C. Given this information, economic and employment opportunities related to natural resource extraction in Carter County are limited.

Open Cut mining sites allow the extraction of bentonite, clay, scoria, soil materials, peat, sand, or gravel. According to data provided by the Montana Department of Environmental Quality (DEQ) in May of 2022, 27 open cut mining sites in Carter County have been permitted, of which 19 are gravel pit sites operated by the Carter County Road Department and three are operated by American Colloid Company (Montana Department of Environmental Quality, 2024).

The northern Black Hills Bentonite Mining District includes parts of Crook County, Wyoming, Carter County, Montana, and Butte County, South Dakota. The northern Black Hills district is an important source of commercial gel-forming sodium-type bentonite. Non-metallic mineral reserves of bentonite are found in the southeast portion of Carter County near Alzada (Eastern Plains Economic Development Corporation, 2022).

There is an existing CO2 pipeline in Carter County. There is also potential for exploring carbon sequestration, wind and/or solar projects. Some of these projects are currently being researched. Due to this, mineral and energy refers to both conventional and green sources of mineral and energy resources and harvesting throughout this section.

Many energy and mineral resources occur on both private and government-managed lands within Carter County. These resources have great economic potential for the citizens of this great county. Carter County recognizes that the full development of its abundant mineral resources is desirable and necessary to the economic well-being of the county, state, and the nation. Energy and mineral resource extraction is consistent with the local history, custom and culture. Therefore, the following are the policies of Carter County:

- 1. GOAL:** Encourage appropriate mineral and energy resource exploration and development in Carter County that is consistent with the Energy Use Plan currently in development.

**Objective 1A:** Encourage elimination of unreasonable or unfounded barriers, prohibitions, and impediments to mineral and energy resource exploration and development.

**Objective 1B:** Support the retention of existing mineral and energy operations, consistent with sound economic and environmental practices.

**Objective 1C:** Support large and small-scale mineral and energy resource exploration consistent with sound economic and environmental practices.

2. **GOAL:** Ensure compliance with all existing state and federal laws regarding, but not limited to, oil, gas, mineral, coal, coal bed methane, ethanol, wind, geo-thermal and solar exploration and/or their production.

**Objective 2A:** Carefully evaluate proposed revisions of the General Mining Law of 1872 for undue adverse impact on the mining industry in the county.

*Policy 1: The County will make recommendations regarding any such proposed revisions of the General Mining Law of 1872 to the appropriate state and federal representatives in order to influence the outcome to favor the custom, culture, and economy of Carter County.*

**Objective 2B:** Mineral and energy resource exploration and development are among the historic multiple uses on state and federally managed land; their continuance is compatible with the multiple-use principle.

### **WILDERNESS AREAS**

The Wilderness Act of 1964 created a National Wilderness Preservation System to be composed of federally managed lands designated by Congress as "wilderness areas." The Act defined a wilderness as "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." The definition states that a wilderness thus is in "contrast with those areas where man and his own works dominate the landscape." The Act provides that all suitable wilderness areas should be inventoried by the federal agency charged with management responsibility for the particular area. This inventory and recommendations by the agency as to whether the areas should be established as wilderness areas were to be completed within ten (10) years of passage. In the Federal Land Policy Management Act of 1976, Congress established a clear directive that by 1991, the Secretary of the Interior must review all roadless areas of 5,000 acres or more on the federally managed lands (identified as having wilderness characteristics as described in the Wilderness Act) and give to the President a recommendation as to the suitability or unsuitability of each area for preservation as wilderness.

1. **GOAL:** Carter County will take a proactive approach in the designation and management of wilderness areas in Carter County.

**Objective 1A:** Uphold the legal requirements and qualifications of the Wilderness Act, including providing for continuation of existing uses, and regulation of existing uses so to prevent unnecessary or undue degradation of the environment.

*Policy 1: Carter County will forward to Congress and to the appropriate decision-making agencies its recommendations regarding areas proposed as wilderness or non-wilderness areas. Said recommendations will be based upon the county's evaluation of impacts upon Carter County and southeastern Montana and may include proposals for modifications or adjustments of boundaries of proposed areas.*

**Objective 1B:** Carter County advocates the expeditious review and determination of any Wilderness Study Areas in the County.

**Objective 1C:** Review current wilderness recommendations in relation to the impacts on natural resource-based industries, the economic stability of the County, and on the custom and culture of the citizens of Carter County.

*Policy 2: A recommendation from the County will be forwarded to Congress based on the evaluation of impacts to the County.*

*Policy 3: A recommendation from the County will be forwarded to Congress for modification or adjustment of boundaries based on this evaluation.*

**Objective 1D:** Eliminate multiple-use land being closed indefinitely in "study areas", even though the land does not meet the wilderness requirements and qualifications set forth by the Wilderness Act.

**2. GOAL:** Protect Montana's water resources and water adjudication system.

**Objective 2A:** Recognition that a wilderness designation does not affect state authority over water resources and Montana's substantive and procedural laws controlling appropriation and allocation of water resources remain the primary authorities over waters in Carter County and in any area within Carter County that may be designated as a wilderness area.

**Objective 2B:** Protect any interests in ditches, reservoirs or water conveyance facilities and easements or rights or way associated with those interests, from impairment or diminution by any wilderness designation.

**Objective 2C:** Reaffirm the rights to access to enter, inspect, repair, and maintain those interests are not affected by any wilderness designation, including the use of mechanized vehicles and equipment for repairs and maintenance of such facilities.

### **WILD AND SCENIC RIVERS**

The National Wild and Scenic Rivers Act, 16 U.S.C. 88 1271-1287, provides the guidance for identification and designation of individual river segments for study, and for recommendation for inclusion as a Wild and Scenic River. Section 1271 calls for protection of "certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values."

Under 16 U.S.C. § 1283, any federally managed lands which include, border on, or are adjacent to any river included in, or under consideration for inclusion in, the national system must be managed by the Secretary of Interior so as to protect such rivers in accordance with the purposes of the Act. However, 16 U.S.C. § 1283 Co), provides that the section is not to be "construed to

abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.”

1. **GOAL:** Carter County will take a proactive approach in the designation and management of any Wild and Scenic River segments or similar designations in Carter County.

**Objective 1A:** The County will develop its own management plan for any proposed Wild and Scenic River segment or similar designation in the County.

**Objective 1B:** Uphold the legal requirements and qualifications set forth by the Wild and Scenic Rivers Act including those providing for the continuation of existing uses, and the regulation of existing uses only so as to prevent unnecessary or undue degradation of the environment.

**Objective 1C:** Review of any proposed Wild and Scenic River recommendations in relation to the impacts on natural resource-based industries, the economic stability of the County, and on the custom and culture of the citizens of Carter County.

### **THREATENED, ENDANGERED AND SENSITIVE SPECIES**

The keystone of good environmental stewardship lies in a healthy resource base. Endangered and threatened species, as well as all plants and all animals, depend on the intricate balance of stable ecological, economic, and social functions of the immediate local community.

Carter County will pay particular attention to all species designated in any category or classification for protection, or consideration of protection, under the Endangered Species Act.

1. **GOAL:** Carter County will develop a proactive approach in the designation and management of any species designated in any category or classification for protection or consideration of protection, under the Endangered Species Act or similar designations in Carter County.

**Objective 1A:** Compliance with the full procedural provisions of applicable state and federal statutes.

**Objective 1B:** Carter County will participate fully with federal and state agencies to prepare an analysis of the economic and social impacts such designation will have on the County prior to the designation of any species for protection under the Endangered Species Act.

**Objective 1C:** Carter County will consider the information from the above analysis to develop a coordinated management plan with state and federal agencies for the management of any species designated for protection under the Endangered Species Act in the County.

**Objective 1D:** Carter County will participate and coordinate with federal and state agencies to prepare an analysis of the economic and social impacts such as introduction or reintroduction will have on the County prior to the introduction or reintroduction of any species designated for protection under the Endangered Species Act in the County.

**Objective 1E:** Any threatened or endangered species designation should not disrupt uses of the land and it should be consistent with Carter County's Growth Policy.

**Objective 1F:** Carter County believes that protection of endangered and threatened species can be most effectively achieved by cooperation between private landowners and public land users rather than imposing land-use restrictions and penalties.

## **CULTURAL, GEOLOGICAL AND PALEONTOLOGICAL RESOURCES**

Carter County contains many special features, which by their remote and rugged nature are largely self-protected. Where an imminent threat to these special features is identified, mitigation efforts necessary to protect significant scientific, educational, and recreational value will be identified. Though Carter County is chiefly made up of grazing, grasslands and minimal small grain farming, many other special features are susceptible to damage by recreation seekers.

The Montana Constitution addresses Cultural Resources in Article IX, Section 4 thus: "The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation and administration of scenic, historic, archeological, scientific, cultural, and recreational areas, sites, records, and objects, and for their use and enjoyment by the people."

1. **GOAL:** Encourage the preservation of all parts of our cultural and paleontological heritage.

**Objective 1A:** Recognition of special features in Carter County, including:

- Carter County Museum, the first county museum founded in the State of Montana, housing geological, paleontological, natural habitat and cultural artifacts.
- Medicine Rocks State Park provides hiking, photography & wildlife viewing.
- Custer National Forest.
- Camp Needmore, one of the few remaining actively used CCC Camps from the 1930's.

- Other historic sites, including but not limited to Fighting Butte, Chalk Buttes, Finger Buttes, etc., scattered throughout the county, which were utilized by the American Indian and later by pioneers.
- Numerous dinosaurs and other paleontological sites.

**Objective 1B:** Carter County will support the Carter County Museum's stewardship of paleontological and cultural heritage and its ability to continue to meet repository standards for state and federal agencies. Carter County Museum is a designated repository for paleontological material from Bureau of Land Management and USDA National Forest Service lands, as well as a repository for archaeological and paleontological material from Medicine Rocks State Park.

- Carter County and the Carter County Museum will work with other agencies to 1) develop a guide that local land managers can refer to when they encounter fossils in the field, 2) develop a plan to uniformly manage fossil resources across the county's public and private lands, (3) mitigate potential impacts of legal tourism, such as noxious weed dispersal, erosion, and littering, and 4) address ongoing poaching of fossils and other natural resources.
- Use increased "boots-on-the-ground" related to the museum and paleontology digs to promote education about noxious weeds, sustainable agriculture, and land use, and potentially conduct localized land remediation efforts while in the field (e.g. weed pulling).

### **ROADS: ACCESS AND TRANSPORTATION**

It is the policy of Carter County to develop and maintain a transportation plan that creates accessibility across all federal and state managed lands within the county.

- 1. GOAL:** Maintain the historic right to travel over federal and state lands wherever necessary in pursuit of ranching, farming, logging, mining, recreational activities, motorized vehicle use and all other historic uses.

**Objective 1A:** Support the economy of the county, by having access to agricultural lands and commercial centers by a maintained road system.

**Objective 1B:** Keep all rights-of-way going to and inside of public lands open for the enjoyment of all the public.

**Objective 1C:** Identify mechanisms to help maintain the uses of roads within the boundaries of the county.

**Objective 1D:** Enhance the opportunities for further economic development by accessibility.

**Objective 1E:** Control the spread of noxious weeds.

**Objective 1F:** Maintain open spaces.

**Objective 1G:** Protect the environment.

**Objective 1H:** Encourage adoption of rules controlling off road recreational use of off-road vehicles.

**2. GOAL:** Protect private property rights within the county.

**Objective 2A:** Access to and/or across federal and state administered lands within the county should not entail encumbrances or restrictions on private property rights.

**3. GOAL:** Carter County will develop a coordinated approach to the issues of roads and rights-of-way with federal and state agencies.

**Objective 3A:** The prevailing federal law with respect to roads and rights-of-way is RS 2477 (the Mining Law of July 26, 1866), which states in Section 8: “The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”

**Objective 3B:** Federal statute defines federal land right-of-way as follows: Any road, trail, access or way upon which construction has been carried out to the standards in which public rights-of-way were built within historic context.

**Objective 3C:** Road closures and obliterations in the county will not occur where there may be possible RS 2477 right-of-way, without meaningful coordination and concurrence between federal, state and Carter County Officials.

**4. GOAL:** Carter County, in coordination with federal and state agencies, will work to develop a complete inventory of all roads and right-of-ways in Carter County.

**Objective 4A:** Right-of-ways inventory will include, but are not limited to, a database, maps, GIS locations and aerial photographs.

### **LAW ENFORCEMENT AND PUBLIC SAFETY**

The Carter County Sheriff’s Office provides law enforcement services throughout the county and is located in Ekalaka. The Sheriff’s Office employs four full-time staff members, including the Sheriff, and one part-time staff member. The Sheriff’s Office is served by the 911 Dispatch Center in Baker.

The Town of Ekalaka does not have a police department, but the Town does have an agreement with the County to provide law enforcement services to the community. Additionally, there is a

mutual aid agreement between the Sheriff's Office, Bureau of Land Management, Department of Natural Resources and Conservation, and the U.S. Forest Service, as well as a Memorandum of Understanding between Carter County and the neighboring counties, to provide law enforcement services.

Carter County employs a Disaster and Emergency Services (DES) and Safety Coordinator.

1. **GOAL:** Preserve and protect the peace and dignity of the people of Carter County, protect their rights and privileges established under the Montana Constitution and the Constitution of the United State of America.

**Objective 1A:** Develop interagency cooperative agreements to insure full cooperation of federal and state law enforcement agencies with the Carter County Sheriff's Department and the DES (Department of Emergency Services).

**Objective 1B:** Carter County Sheriff is to be advised of all law enforcement activities in Carter County and the Town of Ekalaka.

**Objective 1C:** Carter County Sheriff is to have prior notification by any state or federal law enforcement agency of any investigation, searches, arrests, or any other law enforcement activities within the boundaries of Carter County, Montana.

2. **GOAL:** Obtain the maximum federal and state funding available to support law enforcement and related activities, which may include fighting fires, search and rescue, and other activities as needed.

**Objective 2A:** Apply for and have state and federal agency's support and concurrence to budget and appropriate funds for local law enforcement and related activities.

**Objective 2B:** Develop interagency cooperative agreement with respect to budget and appropriate funds for law enforcement and related activities.

**Objective 2C:** Enhance the county law enforcement – training program through available state and federal funds and state and federal training programs and facilities.

**Objective 2D:** Create a written policy and/or protocol for working with federal and state law enforcement agencies.

3. **GOAL:** To hire additional staff, so that the laws and individual state and federal constitutional rights are administered properly within the county.

## **CLEAN AIR**

1. **GOAL:** The Clean Air Act as amended in 1990 provides the authority and standards for clean air in Carter County.

**Objective 1A:** Any activity affecting clean air, either directly or indirectly, is coordinated through local government and is consistent with the Resource Use Management Plan of Carter County.

**Objective 1B:** All management plans and land use practice modifications proposed by either state or federal agencies premised on clean air issues are coordinated through local government and are consistent with the protection of private property rights.

**Objective 1C:** To recognize the economic and social benefits of customary land use for sustainable agricultural activities in Carter County.

## **NOISE POLLUTION**

1. **GOAL: Continue** to ensure an agricultural atmosphere currently enjoyed in Carter County.

**Objective 1A:** Any activity affecting noise pollution, either directly or indirectly, is coordinated through local government and is consistent with the Resource Use Management Plan of Carter County.

**Objective 1B:** All management plans and land use practice modification proposed by either state or federal agencies premised on noise pollution issues are coordinated through local government and are consistent with the protection of private property rights.

**Objective 1C:** To recognize the economic and social benefits of customary land use for sustainable agricultural activities in Carter County.

# **APPENDICES: A THROUGH J**

# APPENDIX A: FEDERAL FOREST PAYMENTS

Forest Service Payments for FY 2023									
Eligible County FY 2023	Total Principal	Title I or 25%		Title II		Title III		Totals	April 2023
	County Share of State Payment (5.7% Sequestration Not Yet Applied)	Percent or 25% Allocation	Payment	Percent Retained at US Treasury	Amount Retained at US Treasury	Percent Allocation	Payment	Titles I + III	Total to Counties Less 5.7% Sequestration
Carter	\$126,792.93	100%	\$126,792.93	0%	\$0.00	0%	\$0.00	\$126,792.93	\$119,565.73
Powder River	\$395,521.82	85%	\$395,521.82	15%	\$69,797.97	0%	\$0.00	\$395,521.82	\$372,977.08
Rosebud	\$72,678.75	100%	\$72,678.75	0%	\$0.00	0%	\$0.00	\$72,678.75	\$68,536.06
<b>MT Total</b>	<b>\$15,116,675.76</b>		<b>\$14,567,959.00</b>		<b>\$2,006,669.11</b>		<b>\$474,388.69</b>	<b>\$15,042,347.69</b>	<b>\$14,255,025.31</b>
Forest Service Payments for FY 2022									
Eligible County FY 2022	Total Principal	Title I or 25%		Title II		Title III		Title I and Title III Totals	April 2022 Payments to Counties
	County Share of State Payment (5.7% Sequestration Not Yet Applied)	Percent or 25% Allocation	Payment	Percent Retained at US Treasury	Amount Retained at US Treasury	Percent Allocation	Payment		
Carter	\$ 58,253.88	100	\$ 58,253.88	0	\$ -	0		\$ 58,253.88	\$ 58,253.88
Powder River	\$ 268,678.89	85	\$ 268,678.89	15	\$47,413.92	0		\$ 268,678.89	\$ 268,678.89
Rosebud	\$ 69,652.22	100	\$ 69,652.22	0	\$ -	0		\$ 69,652.22	\$ 69,652.22
<b>MT Total</b>	<b>\$14,382,680.73</b>		<b>\$13,940,034.12</b>		<b>\$2,015,795.64</b>		<b>\$371,638.72</b>	<b>\$14,311,672.84</b>	<b>\$14,382,680.73</b>
Forest Service Payments for FY 2021									
Eligible County FY 2021	Total Principal	Title I or 25%		Title II		Title III		Title I and Title III Totals	April 2021 Payments to Counties Less Sequestration
	County Share of State Payment (5.7% Sequestration Not Yet Applied)	Percent or 25% Allocation	Payment	Percent Retained at US Treasury	Amount Retained at US Treasury	Percent Allocation	Payment		
Carter	\$ 72,952.24	100	\$ 72,952.24	0	\$ -	0	\$ -	\$ 72,952.24	\$ 68,793.96
Powder River	\$ 328,924.52	85	\$ 328,924.52	15	\$58,045.50	0	\$ -	\$ 328,924.52	\$ 310,175.82
Rosebud	\$ 63,436.10	100	\$ 63,436.10	0	\$ -	0	\$ -	\$ 63,436.10	\$ 59,820.24
<b>MT Total</b>	<b>\$12,868,276.04</b>		<b>\$12,542,633.52</b>		<b>\$1,817,641.79</b>		<b>\$325,642.52</b>	<b>\$12,868,276.04</b>	<b>\$12,197,140.10</b>
Forest Service Payments for FY 2020									
Eligible County FY 2020	Principal County Share of State Payment	Title I or 25%		Title II		Title III		Title I and Title III Totals	April 2020 Payments to Counties
		Percent or 25% Allocation	Payment	Percent Retained at US Treasury	Amount Retained at US Treasury	Percent Allocation	Payment		
Carter	\$ 62,207.13	100	\$ 62,207.13	0	\$ -	0	\$ -	\$ 62,207.13	\$ 62,207.13
Powder River	\$ 370,912.33	85	\$ 370,912.33	15	\$ 58,410.96	0	\$ -	\$ 370,912.33	\$ 370,912.33
Rosebud	\$ 72,533.59	100	\$ 72,533.59	0	\$ -	0	\$ -	\$ 72,533.59	\$ 72,533.59
<b>MT Total</b>	<b>\$13,737,335.12</b>		<b>\$13,401,236.65</b>		<b>\$1,997,185.20</b>		<b>\$336,098.47</b>	<b>\$13,737,335.12</b>	<b>\$13,800,948.96</b>
Forest Service Payments for FY 2019									
Eligible County FY 2019	Total Principal	Title I or 25%		Title II		Title III		Title I and Title III Totals	April 2019 Payments to Counties Less Sequestration
	County Share of State Payment (6.2% Sequestration Not Yet Applied)	Percent or 25% Allocation	Payment	Percent Retained at US Treasury	Amount Retained at US Treasury	Percent Allocation	Payment		
Carter	\$58,615.97	100	\$58,615.97	0	\$0.00	0	\$0.00	\$58,615.97	\$58,615.97
Powder River	\$330,995.42	85	\$330,995.42	15	\$58,410.96	0	\$0.00	\$330,995.42	\$330,995.42
Rosebud	\$73,657.80	100	\$73,657.80	0	\$0.00	0	\$0.00	\$73,657.80	\$73,657.80
<b>MT Total</b>	<b>\$14,116,057.25</b>		<b>\$13,763,531.34</b>		<b>\$1,997,185.20</b>		<b>\$352,525.91</b>	<b>\$14,116,057.25</b>	<b>\$14,176,880.59</b>

## FOREST RESERVE OR 25% FUND

Thirty-four Montana counties that have National Forest lands located within their borders receive Forest Reserve payments. These payments are calculated annually and are 25% of the revenue earned by the national forests within their respective counties. This revenue is derived from timber sales, grazing fees, land use fees, recreation charges, utility fees, mineral revenues, and admission or user fees. The funds when sent to the counties are earmarked for schools and roads.

The assessment of the 25% funds received annually by the thirty-four Montana counties containing National Forest acreage in Montana shows Carter County fourth from the bottom of the list for payment per acre of National Forest Land. A complete list of the 34 counties showing National Forest acreage and Forest Reserve payments is shown in Appendix A. More information on Montana county funding from Federal Forest Payments can be found at: <https://www.mtcounties.org/resources-data/>.

## APPENDIX B: MONTANA PAYMENT IN LIEU OF TAXES (PILT) FUNDS

Montana Payment in Lieu of Taxes (PILT) FFY 2023 & FFY 2024									
County	Payment			Percent Change	Acres			Per Acre	
	June 2023	June 2024	Change		2023	2024	Change	2023	2024
Carter	\$266,997	\$284,810	\$17,813	6.67%	593,732	593,732	0	\$0.45	\$0.48
Custer	\$1,036,774	\$1,104,128	\$67,354	6.50%	332,435	332,472	37	\$3.12	\$3.32
Fallon	\$52,120	\$55,597	\$3,477	6.67%	115,901	115,901	0	\$0.45	\$0.48
Powder River	\$267,028	\$284,843	\$17,815	6.67%	593,800	593,800	0	\$0.45	\$0.48
Prairie	\$192,000	\$204,809	\$12,809	6.67%	426,957	426,957	0	\$0.45	\$0.48
Rosebud	\$223,974	\$156,282	(\$67,692)	-30.22%	325,793	325,793	0	\$0.69	\$0.48
Treasure	\$1,898	\$359	(\$1,539)	-81.09%	748	748	0	\$2.54	\$0.48
Wibaux	\$12,140	\$12,950	\$810	6.67%	26,995	26,995	0	\$0.45	\$0.48
MTTOTALS	\$40,330,577	\$43,301,694	\$2,971,117	7.37%	27,467,353	27,483,836	16,483	\$1.47	\$1.58

### PILT

“Payment In Lieu of Taxes” or PILT payments are distributed annually by the Bureau of Land Management (BLM). These payments are based on the “entitlement acres” for each county. “Entitlement acres” is the total acreage in the county that is owned by the U.S. Forest Service, BLM, National Park Service, Corps of Engineers, and the Fish and Wildlife Service. These payments to counties are in addition to payments received under other laws, with certain exceptions and deductions. County governments may use PILT payments for any purpose they choose.

### PILT PAYMENTS TO CARTER COUNTY

Carter County has a total of 593,732 PILT entitlement acres. The PILT funding is subject to a population ceiling. Furthermore, PILT is funded at the discretion of the US Congress, the PILT funding to individual counties has never been funded at 100%. Carter County receives an average of \$237,315 in PILT receipts for the last 9 years.

### TAYLOR GRAZING ACT SECTIONS 3 AND 15

Taylor Grazing Act Section 3 lands are those lands operated under organized grazing districts. Taylor Grazing Act Section 15 are those lands operated outside of organized grazing districts. Under both Section 3 and Section 15 the BLM retains 50% of the revenues, which are earmarked for the Range Betterment Fund. These funds are to be used to improve the general condition, management, and productivity of the ranges. The remaining 50% are dispersed differently for Section 3 and for Section 15 lands: Section 3 lands) After the BLM share, 12½% goes to the State Treasury, and 37½% is sent to the US Treasury. The State Treasurer then pays the 12½% to the counties based on each grazing district’s acreage as a percentage of the total acreage. For

Section 15 lands, after the BLM retains 50% of the revenue for the Range Betterment Fund, the remaining 50% is sent to the State Treasurer, who then forwards it to the county of origin.

<b>PILT Montana Payment History by County</b>									
<b>County</b>	<b>FFY 2024</b>	<b>FFY 2023</b>	<b>FFY 2022</b>	<b>FFY 2021</b>	<b>FFY 2020</b>	<b>FFY 2019</b>	<b>FFY 2018</b>	<b>FFY 2017</b>	<b>FFY 2016</b>
Carter	\$284,810	\$266,997	\$244,157	\$241,945	\$235,560	\$227,802	\$219,314	\$210,792	\$204,460
Custer	\$1,104,128	\$1,036,774	\$967,168	\$946,742	\$932,756	\$897,155	\$888,745	\$862,044	\$853,876
Fallon	\$55,597	\$52,120	\$48,643	\$47,483	\$46,327	\$45,166	\$44,008	\$42,760	\$42,146
Powder River	\$284,843	\$267,028	\$249,218	\$243,277	\$237,340	\$231,405	\$225,464	\$219,074	\$215,927
Prairie	\$204,809	\$192,000	\$179,194	\$175,957	\$171,663	\$167,372	\$163,075	\$158,456	\$156,179
Rosebud	\$156,282	\$223,974	\$136,735	\$133,477	\$130,217	\$126,962	\$123,703	\$120,198	\$118,468
Treasure	\$359	\$1,898	\$1,722	\$1,635	\$1,664	\$292	\$284	\$276	\$272
Wibaux	\$12,950	\$12,140	\$11,330	\$11,060	\$10,790	\$10,520	\$10,251	\$9,959	\$9,816
<b>MTTOTALS</b>	<b>\$43,301,694</b>	<b>\$40,330,577</b>	<b>\$38,238,756</b>	<b>\$36,209,980</b>	<b>\$35,166,221</b>	<b>\$33,990,204</b>	<b>\$40,073,049</b>	<b>\$31,786,271</b>	<b>\$30,285,246</b>
<b>County</b>	<b>FFY 2015</b>	<b>FFY 2014</b>	<b>FFY 2013</b>	<b>FFY 2012</b>	<b>FFY 2011</b>	<b>FFY 2010</b>	<b>FFY 2009</b>	<b>FFY 2008</b>	<b>FFY 2007</b>
Carter	\$201,696	\$203,710	\$190,948	\$191,284	\$191,464	\$193,790	\$194,085	\$190,275	\$119,270
Custer	\$846,232	\$849,852	\$792,469	\$813,416	\$781,125	\$779,269	\$759,103	\$728,907	\$470,002
Fallon	\$41,701	\$41,687	\$38,461	\$39,367	\$38,207	\$37,999	\$37,622	\$37,088	\$23,248
Powder River	\$213,650	\$213,573	\$198,029	\$202,695	\$196,724	\$196,098	\$194,152	\$190,341	\$119,312
Prairie	\$154,532	\$154,476	\$142,521	\$145,880	\$141,582	\$141,592	\$140,187	\$137,436	\$86,149
Rosebud	\$117,219	\$117,177	\$108,140	\$110,688	\$107,427	\$107,434	\$106,368	\$104,280	\$65,367
Treasure	\$269	\$269	\$248	\$254	\$247	\$247	\$244	\$239	\$150
Wibaux	\$9,713	\$9,709	\$8,958	\$9,169	\$8,899	\$8,583	\$8,497	\$8,638	\$5,415
<b>MTTOTALS</b>	<b>\$29,259,009</b>	<b>\$28,809,242</b>	<b>\$26,497,071</b>	<b>\$26,151,999</b>	<b>\$24,717,269</b>	<b>\$23,513,338</b>	<b>\$28,060,662</b>	<b>\$27,308,228</b>	<b>\$17,186,456</b>
<b>County</b>	<b>FFY 2006</b>	<b>FFY 2005</b>	<b>FFY 2004</b>	<b>FFY 2003</b>	<b>FFY 2002</b>	<b>FFY 2001</b>	<b>FFY 2000</b>	<b>FFY 1999</b>	
Carter	\$120,326	\$117,657	\$112,769	\$110,473	\$99,002	\$94,327	\$75,353	\$69,326	
Custer	\$471,272	\$465,164	\$449,788	\$445,354	\$389,742	\$381,486	\$262,700	\$249,188	
Fallon	\$23,454	\$23,061	\$11,858	\$109,765	\$80,287	\$134,157	\$69,073	\$78,164	
Powder River	\$120,368	\$117,698	\$113,630	\$141,855	\$131,131	\$124,482	\$86,458	\$76,640	
Prairie	\$86,912	\$84,984	\$75,566	\$82,275	\$69,150	\$89,995	\$56,749	\$220,215	
Rosebud	\$65,945	\$64,482	\$61,803	\$433,077	\$384,326	\$365,274	\$255,334	\$3,004	
Treasure	\$151	\$148	\$142	\$979	\$877	\$845	\$345	\$33,455	
Wibaux	\$5,463	\$5,342	\$5,120	\$35,481	\$30,973	\$29,287	\$20,464	\$19,449	
<b>MTTOTALS</b>	<b>\$17,269,635</b>	<b>\$17,188,322</b>	<b>\$16,681,936</b>	<b>\$16,874,448</b>	<b>\$16,163,888</b>	<b>\$15,713,745</b>	<b>\$10,109,778</b>	<b>\$9,846,022</b>	

More information on Montana county funding from PILT payments can be found at:  
<https://www.mtcounties.org/resources-data/>.

APPENDIX C: GROWTH POLICY FIGURES AND TABLES

Table 4.1 Carter County Land Ownership (Montana Natural Heritage Program, 2024)

Location	Acres	Percentage of Total
Carter County	2,141,719	100%
Private Lands	1,384,746	65%
Federal Lands	595,032	28%
U.S. Bureau of Land Management	504,520	24%
U.S. Forest Service	90,512	4%
State Lands	144,502	7%
State Trust Lands	144,492	7%
Montana Fish, Wildlife and Parks	10	<1%
Local Government	564	<1%
Reservation Boundaries	521	<1%
Conservation Easements	16,354	1%

Table 4.3 Carter County Agricultural Profile (U.S. Department of Agriculture, 2022)

	2002	2007	2012	2017	2022
Number of Farms	289	308	327	323	282
Average Size (acres)	5,768	5,514	5,437	5,473	5,967
Total Land in Farms (acres)	1,666,922	1,698,383	1,778,011	1,767,723	1,682,561

Figure 4.2 Carter County Public Land Ownership (Natural Heritage Map Viewer, 2024)

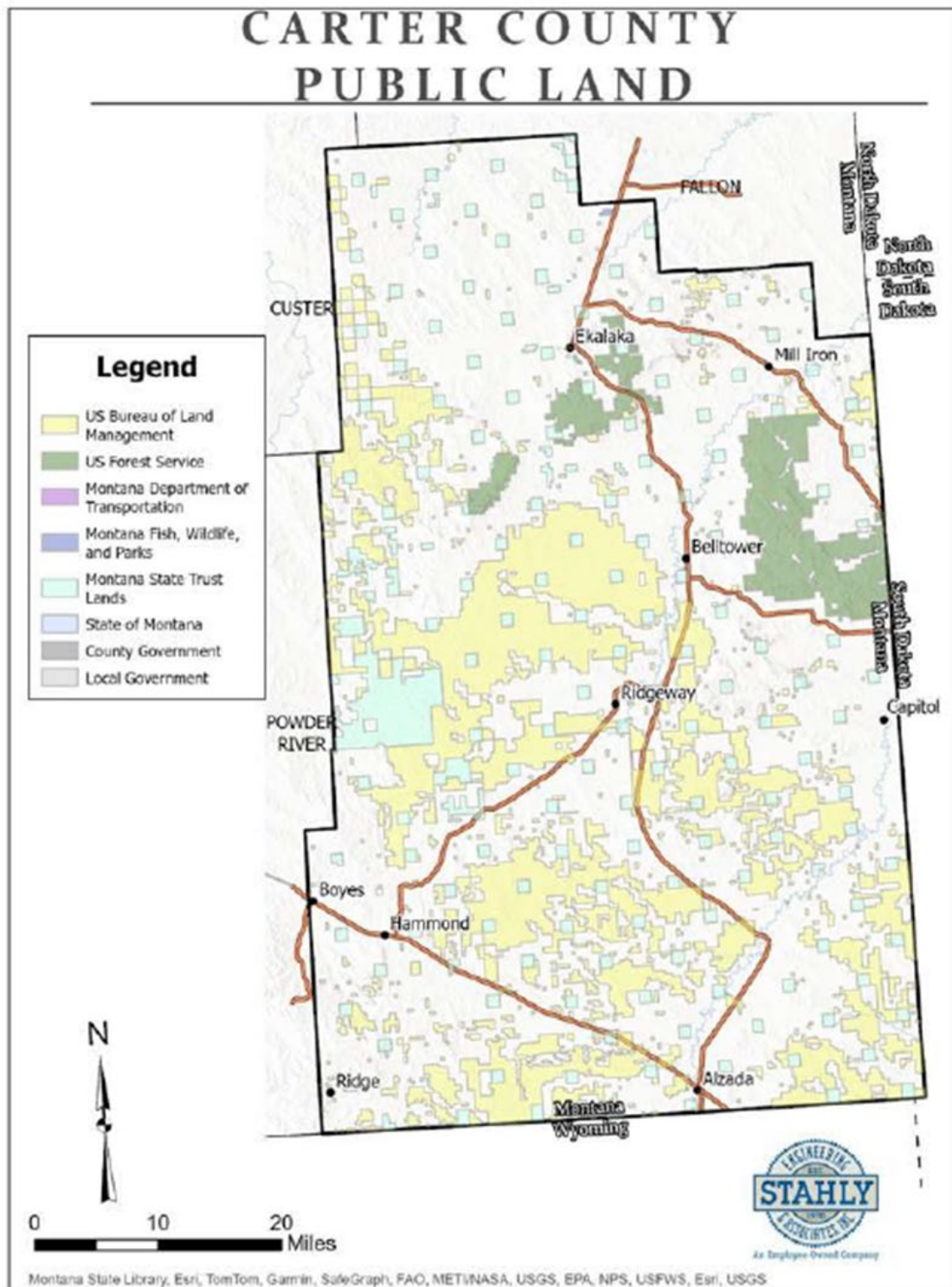


Table 6.1 Carter County and Ekalaka Industries (Headwaters Economics, 2023)

	Carter County	Ekalaka
Number of Civilian Employees (> 16 years)	673	198
Industry	% of Workforce	
Agriculture, forestry, fishing, hunting, and mining	48.4%	8.1%
Construction	10.8%	17.2%
Manufacturing	0.6%	2.0%
Wholesale trade	0.0%	0.0%
Retail trade	4.8%	10.1%
Transport, warehousing, and utilities	3.7%	4.0%
Information	0.4%	0.0%
Finance, insurance, and real estate	2.7%	5.6%
Professional, management, administration, and waste management	3.0%	5.1%
Education, health care, and social assistance	9.7%	17.2%
Arts, entertainment, recreation, accommodation, and food	3.9%	10.6%
Other services, except public administration	5.8%	9.6%
Public administration	6.2%	10.6%

Table 6.3 Household Income in 2021 (Headwaters Economics, 2023)

	Carter County
Total Households	618
Less than \$10,000	3.4%
\$10,000 to \$14,999	7.8%
\$15,000 to \$24,999	17.8%
\$25,000 to \$34,999	14.9%
\$35,000 to \$49,999	14.9%
\$50,000 to \$74,999	14.6%
\$75,000 to \$99,999	13.6%
\$100,000 to \$149,999	6.0%
\$150,000 to \$199,999	2.3%
\$200,000 or more	4.9%

Table 6.4 Household Earnings by Source in 2021 (Headwaters Economics, 2023)

Income and Benefits (dollars)	Carter County	Town of Ekalaka
Mean earnings	\$63,171	\$45,644
Mean Social Security income	\$15,730	\$17,869
Mean retirement income	\$14,927	\$14,692
Mean Supplemental Security Income <i>(provided to adults and children with disability or blindness and people age 65+ who meet financial qualifications)</i>	\$14,754	\$14,754

Poverty levels in Carter County are above the national average, as shown in Figure 6.2. The County ranks 27th among Montana's 56 counties with 13.2% of people living below poverty levels in 2022 (Montana Department of Commerce, 2023).

Figure 6.5 Annual Oil Production for Carter County (Montana Board of Oil & Gas Conservation, 2024)

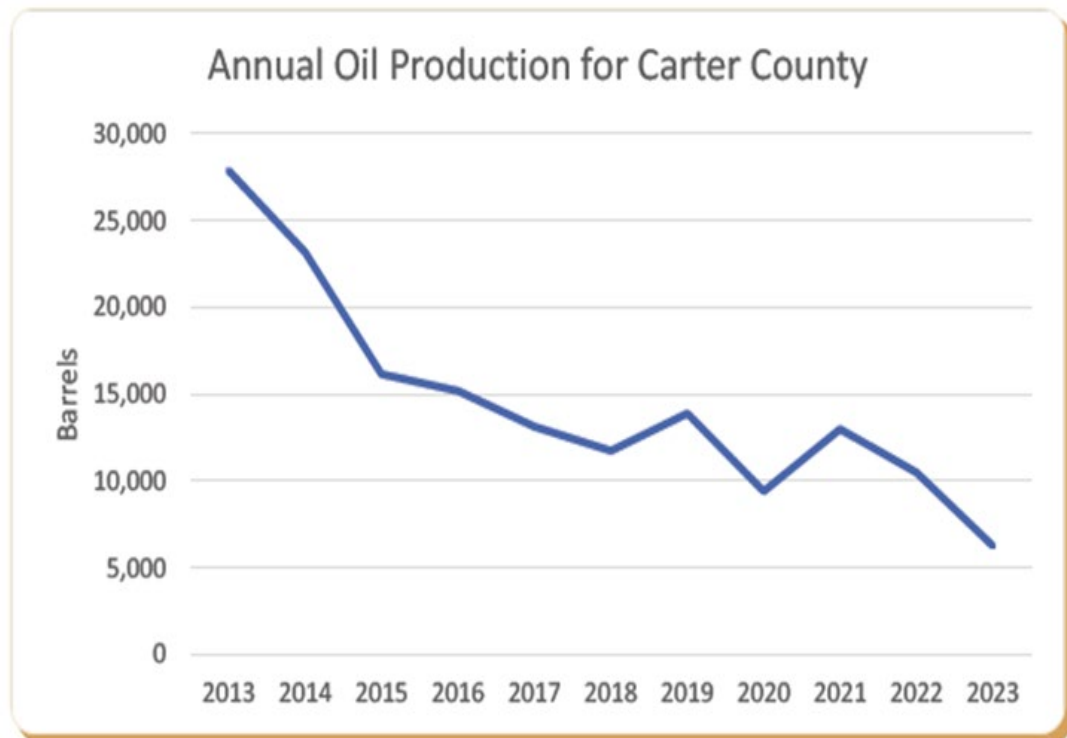
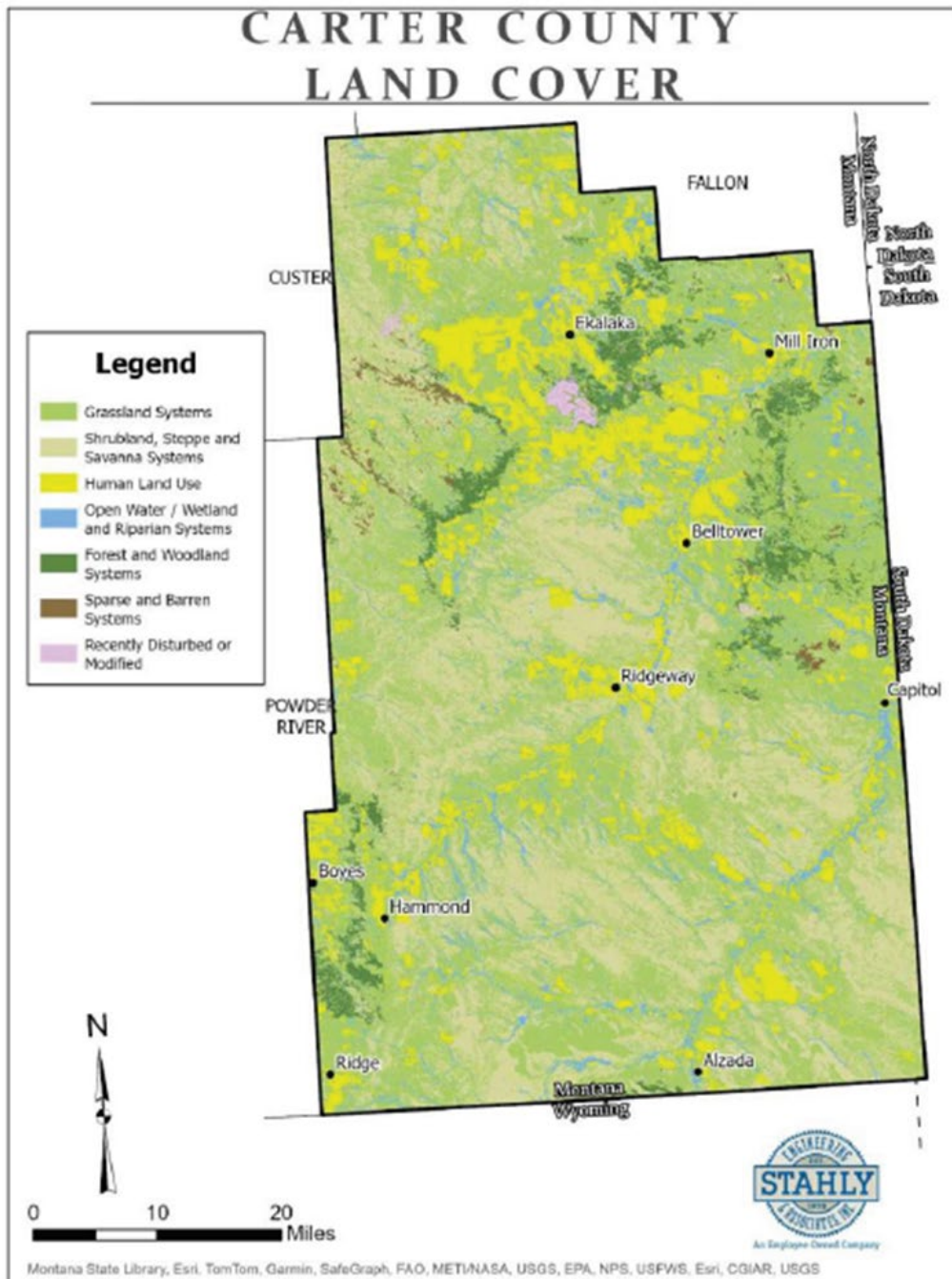


Figure 8.1 Carter County Land Cover Map



**Table 8.1 Carter County Land Cover Summary (Natural Heritage Map Viewer, 2024)**

	<b>Acres</b>	<b>Percent</b>
<b>Grassland Systems</b>	893,069	42%
<b>Shrubland and Steppe Systems</b>	705,134	33%
<b>Human Land Use</b>	210,231	10%
Agriculture (cultivated crops and pasture/hay)	196,989	9%
Developed	13,236	1%
Mining and Resource Extraction	6	<1%
<b>Wetland and Riparian Systems</b>	123,741	6%
<b>Forest and Woodland Systems</b>	84,471	4%
<b>Sparse and Barren Systems</b>	64,454	3%
<b>Recently Disturbed or Modified</b>	60,304	3%

**Table 8.2 Monthly Climate Summary for Ekalaka (Western Regional Climate Center, 2024)**

	<b>J</b>	<b>F</b>	<b>M</b>	<b>A</b>	<b>M</b>	<b>J</b>	<b>J</b>	<b>A</b>	<b>S</b>	<b>O</b>	<b>N</b>	<b>D</b>	<b>Annual</b>
Ave. Max. Temp. (F)	29.7	33.3	42.8	56.6	67.1	76.5	85.9	84.5	73.0	59.4	43.2	32.9	57.1
Ave. Min. Temp. (F)	7.5	10.9	19.6	30.5	40.4	49.7	56.3	54.3	44.0	33.0	20.7	11.5	31.5
Ave. Total Precipitation (in.)	0.46	0.43	0.73	1.39	2.53	3.13	1.84	1.33	1.36	1.03	0.53	0.42	15.19
Ave. Total Snowfall (in.)	5.4	5.7	6.1	3.1	1.1	0.0	0.0	0.0	0.0	1.7	4.5	4.6	32.1
Ave. Snow Depth (in.)	3.0	3.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.0	2.0	1.0

*\*Period of record: 11/23/1896 to 06/10/2016*

## **APPENDIX D: MULTIPLE USE AND COORDINATION WITH FEDERAL AND STATE AGENCIES**

### **Selected Citations of Federal Code and Case Law Affecting County Planning.**

This Plan provides a positive guide for the Resource Use Committee and the Board to coordinate efforts with federal and state land management agencies. This will ensure that the development and implementation of land use plans and management actions are compatible with the best interests of Carter County and its citizens. The Plan is designed to facilitate continued, revitalized, and varied usage of federally and state managed lands in the county.

The Resource Use Committee, the Board, and the citizens of Carter County recognize that federal law mandates coordinated planning of federally managed land with local governments. They positively support varied use of these lands. This varied usage necessarily includes continuation of the historic and traditional economic uses, which have been made of federal- and state-managed lands within the county. It is therefore the policy of Carter County that federal and state agencies will inform the Board of all pending or proposed actions affecting local communities and citizens, and coordinate with the Board in planning and implementation of those actions. Federal laws governing land management mandate this planning coordination. They include, but are not limited to, the following particulars:

### **BUREAU OF LAND MANAGEMENT**

The Federal Land Policy and Management Act, 43 U.S. Section 1701, states the National Policy to be: “the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other federal and state planning efforts.” See 43 USC Section 1701 (a)(2). 43 U.S.C.

Section 1712 (c) sets forth the “criteria for development and revision of land use plans.” Section 1712 (c) (9) refers to the coordinate status of a county that is engaging in land use planning. It requires the Secretary [of Interior] to “coordinate the land use inventory, planning, and management activities with the land use planning and management programs of other federal departments and agencies and of the State and local governments within which the lands are located.” Section 1712 also provides that the “Secretary shall assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans.” These provisions give preference to those counties who are engaging in land-use planning. Counties with a planning program thus have preference over the general public, special interest groups, and even counties not participating in land-use planning.

Because of the requirement that the Secretary [of the Interior] “coordinate” land use, inventory, planning, and management activities with local governments, it is reasonable to read the requirement of assisting in resolving inconsistencies to mean that the resolution process takes place during planning instead of at completion of planning when the draft federal plan is released for public review.

The section further requires that the “Secretary [of the Interior] is to “provide for meaningful public involvement of state and local governmental officials... in the development of land use programs, land use regulations, and land use decisions for public lands.”

When read in the light of the “coordinate” requirement of this section, it is reasonable to conclude “meaningful involvement” to refer to on-going consultations and involvement throughout the planning phase, not merely at the end. This latter provision of the statute also distinguishes local government officials from members of the general public or special interest groups.

Section 1712 (c)(9) further provides that the Secretary of the Interior must assure that the BLM’s land use plan be “consistent with State and local plans” to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act (FLPMA). It is reasonable to read this statutory provision in association with the requirement of coordinated involvement in the planning process.

The provisions of Section 1712(c)(9) set forth the nature of the coordination required by the Bureau with planning efforts by Indian tribes, other federal agencies, and state and local government officials. Subsection (f) of Section 1712 sets forth an additional requirement that the Secretary of the Interior “shall allow an opportunity for public involvement” which again includes Federal, State and local governments. The “public involvement” provisions of Subsection (f) do not limit the coordination language of Section 1712(c)(9) or allow the Bureau to simply lump local government officials with special interest groups of citizens or members of the public in general. The coordination requirements of Section 1712(c)(9) are set apart for special involvement those government officials who are engaged in land use planning, as is the case in Beaverhead County. This statutory language that gives preference to the county makes sense because it is already engaged in land use planning. The Board has an obligation to plan for future land use to serve the welfare of all of the people county, and to promote continued operation of the government in the best interest of the people of Beaverhead County. Historically, the Congress, the Bureau of Land Management, and the Federal Courts have recognized that community economic stability is an important consideration in the management of federally managed lands. In interpreting the Taylor Grazing Act, 43 U.S.C. Section 315 et seq. (the Act which created the agency, that become the Bureau of Land Management), the Courts have recognized the purpose of the Act “is to stabilize the livestock industry and to permit the use of public range according to needs and qualifications of livestock operators with base holdings.” See *Chournos v. United States*, 193 Fd2d 321 (10th Cir. Utah 1951), Cert den. 343 U.S. 977 (1952). In *Red Canyon Sheep Co. v. Ickes*, 98 Fd2d 308 (1938), the Court stated that the purpose of the Taylor Grazing Act is to provide the “most beneficial use possible of public range because the livestock industry of the West is an important source of food supply for the people of the nation.” Red Canyon also pointed out that “in the interest of the stock growers themselves” the Act was intended to define “their grazing rights and to protect those rights by regulation against interference.”

Similarly, the Bureau of Land Management Regulations themselves mandate the agency to coordinate its land use plans with local governments that have adopted comprehensive land use plans of their own. Some of these are shown below:

**43 C.F.R. Section 1601.3-1(a)**

In addition to public involvement, the BLM is obligated to coordinate its planning processes with land use plans of local governments.

**43 C.F.R. Section 1610.3-1(c)(1)**

“In providing guidance to BLM personnel, the BLM State Director shall assure such guidance is as “consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other State agencies, Indian tribes and local governments that may be affected ....”

**43 C.F.R. Section 1610.3-1(e)**

The BLM is obligated to take all practical measures to resolve conflicts between federal and land use plans of local government.

**43 C.F.R. Section 1610.3-2(a)**

The BLM plan must be consistent with officially approved and adopted local land use plans, so long as such local plans are consistent with federal law and regulations.

**43 C.F.R. Section 1610.3-2(e)**

Prior to BLM resource management plan or management framework plan approval; the BLM shall submit to the governor a list of known inconsistencies between the BLM plans and local plans.

**43 C.F.R. Section 1610.3-2(c)**

The BLM has no duty to make its plan consistent with a local government plan if the local government does not notify the BLM existence of its local plan.

## **USDA FOREST SERVICE**

Pertinent parts of United States Forest Service Regulations are, as follows:

**16 U.S.C. Section 1604(a)**

The Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

**36 C.F.R. Section 221.3(a)(I)**

The Forest Service is obligated to consider and provide for “community stability”<sup>1</sup> in its decision-making processes. See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); The Use Book at 17.

### **36 C.F.R. Section 219.7(a)**

The Forest Service is obligated to coordinate with equivalent and related planning efforts of local governments.

### **36 C.F.R. Section 219.7(d)**

The Forest Service is obligated to meet with local governments, to establish a process for coordination. At a minimum, coordination and participation with local governments shall occur prior to Forest Service selection of the preferred management alternative.

*“Community stability” is defined as a combination of local custom, culture and economic preservation.*

### **36 C.F.R. Section 219.7(d)**

The Forest Service in its decision-making processes is obligated to coordinate with local governments prior to selection of the preferred management alternative.

### **36 C.F.R. Section 219.7(c)**

The Forest Service is obligated, after review of the county plan, to display the results of its review in an environmental impact statement. See also 40 C.F.R. Sections 1502.16(c) and 1506.2

### **36 C.F.R. Section 219.7(c)(4)**

The Forest Service is obligated to consider alternatives to its proposed alternative if there are any conflicts with county land use plans.

### **36 C.F.R. Section 219.7(f)**

The Forest Service is required to implement monitoring programs to determine how the agency’s land-use plans affect communities adjacent to or near the national forest being planned.

## **COURT CASES UPHOLDING LOCAL LAND USE PLANNING**

### **California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987)**

State land use planning is allowed on federal lands as long as such land use planning does not include zoning. Federal agencies cannot claim “Constitutional Supremacy” if the agency can comply with both federal law and the local land use plan.

## **Wisconsin Public U.S. Intervenor v. Mortier, 111 S. Ct. 2475 (1991)**

When considering preemption, the U.S. Supreme Court will not assume that the State's historic powers are superseded by federal law unless that is the clear manifest purpose of Congress

*2 coordinate is defined as "equal, of the same rank, order, degree or importance; not subordinate." Blacks Law Dictionary 303 (5th ed. 1979).*

## **ENDANGERED SPECIES ACT**

### **Montana Farm Bureau Federation, et al. v. Babbitt, No. 93-0168-E-HLR (Dec. 14, 1993)**

The Fish and Wildlife Service is required to follow all procedural mandates in the Endangered Species Act (ESA) when listing a species as threatened or endangered, including (1) listing the species within one year of publication of the notice of proposed listing, otherwise Fish and Wildlife Service must withdraw the regulation. (2) providing actual notice to local governments prior to listing; (3) providing adequate public review of data used to list the species; and (4) adequately considering and responding to public comments regarding the proposed listing.

### **16 U.S.C. Section 1533(b)(5)(A)(ii)**

Not less than ninety days before the effective date of the regulation, the Fish and Wildlife Service is required to give actual notice to local governments of its intent to propose a species for listing or changing or propose critical habitat.

### **50 C.F.R. Section 423.16(c)(i)(ii)**

Once notified, the local government has the opportunity to comment on the proposed species listing or critical habitat designation.

### **16 U.S.C. Section 1533(i)**

The Fish and Wildlife Service must directly respond to the "State agency"<sup>3</sup>

### **16 U.S.C. Section 1533(f)(5)**

Other federal agencies must also consider local government and public comments regarding the management of threatened or endangered species.

### **16 U.S.C. Section 1533(b)(1)(A)**

The listing of a species as threatened or endangered by the Fish and Wildlife Service is to be based on the best scientific and commercial data available.

*3 Under the ESA, a "state agency" is a division, board, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a state. 50 C.F.R. Section 424.02(1)*

### **16 U.S.C. Section 1533(b)(1)(A)**

The Fish and Wildlife Service shall list species only after taking into account efforts of state or political subdivisions to protect the species.

#### **16 U.S.C. Section 1533(b)(2)**

Critical habitat designations must take economic impacts into account. Areas may be excluded as critical habitat based upon economic impacts unless the failure to designate the area as critical habitat would result in extinction of the species.

#### **Douglas County v. Lujan, 810 F. Supp. 1470 (1992)**

The Fish and Wildlife Service is required to complete full National Environmental Policy Act (NEPA) documentation when designating critical habitat.

#### **16 U.S.C. Section 1533(f)(1)**

The Fish and Wildlife Service shall develop and implement recovery plans for the survival of endangered species unless it finds that such a plan will not provide for conservation of the species.

#### **National Wildlife Federation v. Coleman, 529 F2d 359 (1976) cert. denied 429 U.S. 979 (1977)**

Pursuant to the Endangered Species Act, the Fish and Wildlife Service is responsible for species listing, the designation of critical habitat and the development of protective regulations and recovery plans. Once a species is listed, federal agencies have the responsibility to consult with the Fish and Wildlife Service under Section 7 of the ESA. However, once consultation has occurred, the agency is then free to make the final determination. The Fish and Wildlife Service does not have veto power over federal agency actions.

#### **54 Fed. Reg. 554 (January 6, 1989)**

The Sensitive Species Program was created on January 6, 1989, by the Fish and Wildlife Service and is implemented by all federal agencies. These federal agencies are to give “special consideration” to those plant and animal species that the Fish and Wildlife Service is considering for listing but lacks the scientific data to list.

### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

The National Environmental Policy Act requires that all federal agencies consider the impacts of their actions on the environment and on the preservation of the culture<sup>5</sup>, heritage, and custom<sup>6</sup> of local government.

#### **16 U.S.C. Section 4331**

“It is the continuing responsibility of the federal government to use all practicable important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice.

” Thus, by definition, the National Environmental Policy Act requires federal agencies to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and “material traits”. It is reasonable to read this provision of the National Environmental Policy Act as requiring that federal agencies consider the impact of their actions on rural resource-dependent counties. Beaverhead County is such a county. For generations, families have depended upon the “material traits” of ranching, farming, mining, timber production, wood products, hunting, fishing, outdoor recreation, and other resource- based lines of lines of work for their economic livelihoods.

#### **42 U.S.C. Section 4332 (2)(c)**

All federal agencies shall prepare an environmental impact statement (EIS) or an environmental assessment (EA), (i.e. a NEPA document) for “every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.”

#### **42 U.S.C. Section 4332 (c)(iii)**

Such EIS or EA shall include, among other things, alternatives to the proposed action.

5 The term “culture” is defined as “customary beliefs, social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations.” See Webster’s New Collegiate Dictionary, G. & C. Merriam Co., (1975). 6 A custom is a usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory and has acquired the force of law with respect to the place or subject-matter to which it relates. See Bourier’s Law Dictionary 417 (1st ed. 1867).

42 U.S.C. Section 4332 (c) Copies of comments by State or local governments must accompany the EIS or EA throughout the review process.

#### **40 C.F.R. Section 1502.16(c)**

Each NEPA document shall include a discussion of possible conflicts between the proposed federal action and local land use plans.

#### **40 C.F.R. Section 1506.2 (b)**

Federal agencies shall “cooperate to the fullest extent possible” to reduce duplication with state and local requirements. Cooperation shall include:

- (1) Joint planning
- (2) Joint environmental research
- (3) Joint hearings
- (4) Joint environmental assessments

#### **40 C.F.R. Section 1506.2 (d)**

Environmental impact statements must discuss any “inconsistency of a proposed plan with any approved state or local plan and laws (whether or not federally sanctioned).” Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile the proposed action to the plan or law.

#### **40 C.F.R. Section 1508.20(e)**

Mitigation includes (a) avoiding the impact altogether, (b) limiting the degree of the impact, (c) repairing, rehabilitating or restoring the affected environment, (d) reducing the impact by preservation opportunities, or (e) compensating for the impact by replacing or providing substitute resources or environments.

#### **Douglas County v. Lujan 810 F. Supp. 1470 (1992)**

A local government, because of a concern for its environment, wildlife, socioeconomic impacts, and tax base, has been standing to sue federal agencies and seek relief for violations of NEPA.

### **WILD AND SCENIC RIVERS ACT**

#### **16 U.S.C. Section 1271**

It is Congressional policy to protect “... historic, cultural or other similar values in free-flowing rivers or segments thereof.”

#### **16 U.S.C. Section 1279 (b)**

Wild and scenic river designations on federal lands cannot affect valid existing rights.

#### **16 U.S.C. Section 1282 (b)**

The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise and cooperate with states or their political subdivisions .... to plan, protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise.

#### **16 U.S.C. Section 1276(c)**

The study of any river for designation under the Act shall be pursued in close cooperation with appropriate agencies of the affected state and its political subdivisions as possible [and] shall be carried on jointly if request for such joint study is made by the state .... ”

#### **16 U.S.C. Section 1281(e)**

The Federal agency charged with the administration of any component of the national wild and scenic rivers system “may enter into written cooperative agreements with the appropriate official of a political subdivision of a state for state or local governmental participation in the administration of the component.”

#### **16 U.S.C. Section 1283 (c)**

Wild and scenic river designations cannot affect valid existing leases, permits, contracts or other rights.

#### **16 U.S.C. Section 1277(c)**

The federal government is precluded from condemning or taking private land adjacent to a wild or scenic river so long as the local zoning ordinances protect the value of the land.

### **HISTORIC PRESERVATION ACT REGULATIONS**

#### **36 C.F.R. Section 800.5(e)(1)(i)**

If a federal, state, or local action is determined to have an adverse effect on a historic property, the state and federal Historic Preservation officer shall consult with the head of the local government, if requested by the local government.

### **CLEAN AIR ACT**

#### **33 U.S.C. Section 1251(g)**

Federal agencies shall cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources.

#### **33 U.S.C. Section 1252 (A)**

The Environmental Protection Agency (EPA) “shall, after careful investigation, and in cooperation with other federal agencies, state water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs” for preventing water pollution.

### **SOIL AND WATER RESOURCES CONSERVATION ACT**

#### **16 U.S.C. Section 2003(b)**

“Recognizing that the arrangements under which the federal government cooperates through conservation districts with other local units of government and land users have effectively aided in the protection and improvement of the nation’s basic resources, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable”

#### **16 U.S.C. Section 2008**

“In the implementation of the Act, the Secretary [of Agriculture] shall utilize information and data available from other federal, state and local governments.”

### **RURAL ENVIRONMENTAL CONSERVATION ACT**

#### **16 U.S.C. Section 1508**

“The Secretary [of Agriculture] shall, in addition to appropriate coordination with other interested federal, state, and local agencies, utilize the services of local, county, and state soil conservation committees.”

## **RESOURCE CONSERVATION ACT OF 1981**

### **16 U.S.C. Section 3411 (5)**

Congress finds solutions to “chronic erosion-related problems should be designed to address the local social, economic, environmental. and other conditions unique to the area involved to ensure that the goals and policies of the federal government are effectively integrated with the concerns of the local community .... “

### **16 U.S.C. Section 3432**

“The local unit of government is encouraged to seek information from and the cooperation of ... (2) agencies of the Department of Agriculture or other federal agencies .... “

### **16 U.S.C. Section 3451**

“It is the purpose of this subtitle to encourage and improve the capability of state and local units of government and local nonprofit organizations in rural areas to plan, develop, and carry out programs for resource conservation and development.”

### **16 U.S.C. Section 3455**

“In carrying out the provisions of this subtitle, the Secretary [of Agriculture] may□ (2) cooperate with other departments and agencies of the federal government, state, and local units of government and with local nonprofit organizations in conducting surveys and inventories, disseminating information, and developing area plans .... “

### **16 U.S.C. Section 3456 (a)(4)**

The Secretary of Agriculture may provide technical and financial assistance only if “the works of improvement provided for in the area plan are consistent with any current comprehensive plan for such area.”

## **REGULATORY FLEXIBILITY ACT (RFA; 5 U.S.C. §§601-612)**

If a regulation is expected to have a “significant economic impact on a substantial number of small entities,” the RFA requires the issuing agency to consider regulatory impacts and alternatives, with the goal of minimizing significant economic impacts on small entities. In 1996, Congress amended the RFA in the Small Business Regulatory Enforcement Fairness Act, adding judicial review for some of the act’s provisions.

The RFA requires federal agencies to assess the effects of their regulations on small entities, which it defines as including small businesses, small governmental jurisdictions, and certain small

nonprofit organizations. The RFA applies to all regulatory agencies, including Cabinet agencies and the statutorily designated “independent regulatory agencies,” which have sometimes been exempted from other procedural rulemaking requirements.[1]

### **Small Business Regulatory Enforcement Fairness Act.**

SEC. 202. finding: "Congress finds that—

"(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

"(2) small businesses bear a disproportionate share of regulatory costs and burdens;

"(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies; . . .

"(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code

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[1] Congressional Research Services - *The Regulatory Flexibility Act: An Overview* - August 16, 2021

## **PRESIDENTIAL EXECUTIVE ORDER 12866**

### **REGULATORY PLANNING AND REVIEW (September 30, 1993)**

#### **INTRODUCTION:**

“The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves health, safety, environment, and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory policies that respect the role of state, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a system today.” By statute and executive order, an agency proposing a significant regulatory action is required to provide a qualitative and quantitative assessment of the anticipated costs and benefits of that action. Executive Order 12866 requires agencies to assess the benefits and costs of regulatory actions, and for significant regulatory actions, submit a detailed report of their assessment to the Office of Management and Budget (OMB) for review. A rule may be significant under Executive Order 12866 if it meets any of the four criteria below.

#### **Section 1. Statement of Regulatory Philosophy and Principles. (a)**

“The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.”

## **Section I (b)(9)**

“Wherever feasible, agencies shall seek views of appropriate state, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of federal regulations on state, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize federal regulatory actions with related state, local and tribal regulatory governmental functions.”

## **Sec. 3(e), (f)**

“Regulatory action” means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

For a major rule, as defined by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the agency must prepare an initial regulatory flexibility analysis. For SBREFA, a rule may be major and require a deeper analysis if it may:

- Have an annual effect on the economy of \$100 million or more;
- Create a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets.

**Sec. 4. Planning Mechanism.** “In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning. . .”

#### **Sec. 5. Existing Regulations.**

“In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate;

#### **Section 5(b)**

“State, local and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.”

#### **Section 6 (a)(1)**

“In particular, before issuing a notice of proposed rule making, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those who are expected to be burdened by any regulation (including, specifically, state, local and tribal officials) .... Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rule making.”

### **PRESIDENTIAL EXECUTIVE ORDER 12630 GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS (March 15, 1988)**

Presidential Executive Order 12630 requires federal agencies to analyze the economic effects or takings implications of their proposed policies, decisions, rules, and regulations on the private property, private property rights and investment backed expectations of individual citizens.

This order is intended to direct agencies in their pre-decisional analysis to assess potential takings implications under the 5<sup>th</sup> and 14<sup>th</sup> amendments of the US Constitution.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and

legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision making for those takings that are necessitated by statutory mandate.

### **Section 1 (a)**

“The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation .... Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.”

### **Section 1(c)**

“The purpose of this Order is to assist federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections afforded by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action.”

### **Section 3(e)**

“The Just Compensation Clause [of the Fifth Amendment] is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have significant impact on the use of value or private property should be scrutinized to avoid undue or unplanned burdens on the public fisc<sup>8</sup>.”

8 Fisc, noun [Latin fiscus]: A state or royal treasury. Webster’s Collegiate Dictionary

## **MONTANA PRIVATE PROPERTY ASSESSMENT ACT (MMPA) - MONTANA CODE ANNOTATED 2023**

### **TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION**

#### **CHAPTER 10. STATE AGENCY ACTIONS AFFECTING PRIVATE PROPERTY**

The just compensation clause in Article II, Section 29, of the Montana Constitution and the associated statutory requirement in the Montana Private Property Assessment Act reaffirm this important principle at the State level.

*“Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights.”<sup>[1]</sup>*

Under Montana's Private Property Assessment Act, state agencies are directed<sup>[2]</sup> to consider and follow obligations imposed by the Federal and State constitutions when considering and implementing an action with takings implications in order to avoid unanticipated and undue burdens on the state treasury.<sup>[3]</sup>

Regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary, in nature.

The Montana State Attorney general as directed by the Montana Private Property Assessment Act has provided guidelines, questions, a checklist, and a flow chart for agencies to determine whether a particular action or regulation have takings implications. If the use of the guidelines, questions, checklist, and flowchart indicates that a proposed agency action has takings or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act, Mont. Code Ann. § 2-10-105. Agencies should develop internal procedures to ensure that agency legal staff are consulted during this process. (AG Guidelines, 2011)

State agencies that are required to assess potential takings implications under the MPPAA and Attorney General guidelines should facilitate its finding directly to the Carter County Commissioners. Carter County should also be notified at any time that an agency is taking an action with potential takings implications within the Counties' jurisdictional boundaries.

### **Takings Case Law**

“The right to exclude is “a fundamental element of the property right.””; *Kaiser Aetna v. United States*, 444 U. S. 164, 179–180.;

“**The right to exclude is ‘one of the most treasured’ rights of property ownership.**” *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 435 (1982).;

“According to Blackstone, the very idea of property entails ‘that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.’ 2 W. Blackstone, Commentaries on the Laws of England 2 (1766). In less exuberant terms, we have stated that **the right to exclude is ‘universally held to be a fundamental element of the property right,’** and is ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” 594 U. S. *CEDAR POINT NURSERY v. HASSID* (2021) p. 7

“A property owner acquires a right to compensation immediately upon an uncompensated taking because the taking itself violates the Fifth Amendment.” See *San Diego Gas & Elec. Co. v. San Diego*, 450 U. S. 621, 654 (Brennan, J., dissenting).

“Congress enabled property owners to obtain compensation for takings by the Federal Government when it passed the Tucker Act in 1887, and this Court subsequently joined the state courts in holding that the compensation remedy is required by the Takings Clause itself.” *KNICK v. TOWNSHIP OF SCOTT* 588 U. S. \_\_\_\_ (2019)

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[1] EO-12630

[2] [Montana Department of Justice ATTORNEY GENERAL'S GUIDELINES Revised January 2011](#)

[3] [Mont. Code Ann. § 2-10-104\(2\)](#).

## UNFUNDED MANDATES ACT

### 2 U.S.C. Sec. 1513 Impact on local governments

#### **(a) Findings** The Senate finds that

- (1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;
- (2) cost shifting from the States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and
- (3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

#### **(b) Sense of Senate** It is the sense of the Senate that

- (1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;
- (2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and
- (3) one primary objective of this chapter and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers

### § 1531. Regulatory process

Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

**§ 1533. Small government agency plan** (a) Effects on small governments

**FEDERALISM EXECUTIVE ORDER 13132**

Executive Order 13132 was issued to guarantee the division of governmental responsibilities between the national government and the States intended by the Framers of the Constitution, ensuring that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act. Section 1 of this order defines ‘*Policies that have federalism implications*’ and refers to:

*“Regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”*

EO 13132 clarifies fundamental federalism principles stating:

*“The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.”*

And that,

*“The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.”*

The EO further establishes federalism policymaking criteria stating,

*“There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action.”* [1]

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[1] “Congress, the Department of the Interior, and the USFWS’s own policies have been clear in reaffirming the authority of the states to exercise their broad trustee and police powers as stewards of the Nation’s fish and wildlife species on public lands. This must be considered when contemplating shared stewardship policies.” (State of Alaska, Department of Natural Resources OFFICE OF PROJECT MANAGEMENT AND PERMITTING, - [comment on US Fish & Wildlife Service Proposed Refuge System Planning Policies FWS-HQ-NWRS- 2023-0024](#) - October 16, 2023)

## **APPENDIX E: RESOURCE USE COMMITTEE**

- 1.) All members of the Resource Use Committee shall be residents of Carter County.
- 2.) Upon adoption of this Ordinance, the Resource Use Committee shall be composed of citizens of the county who are willing to dedicate themselves and their time to this county planning effort
- 3.) At a later time, the Resource Use Committee will adopt administrative rules or by-laws by which they will operate. Some of those rules may include term limits, number of committee members, addition or deletion of subcommittees, guidelines to promote diversity in age, experience, and interests. How to handle vacancies, and other matters as necessary.
- 4.) The Resource Use Committee has a chairperson, vice-chairperson, secretary, and writer-editor chosen from its membership and approved by the Carter County Planning Board and the Carter County Commissioners.
- 5.) Each member of the Resource Use Committee shall serve on one or more subcommittees. The balance of the members in each subcommittee shall be people with a particular interest or 'stake' in the subject of the subcommittee.

The Resource Use Committee has divided itself into subcommittees. The following list is of those formed already formed and operating. Other subcommittees will be formed as need and interest dictate.

### Subcommittees of the Resource Use Committee:

Executive Board  
Endangered Species  
Forestry and Timber Management  
Mining, Oil, and Gas  
Private Property  
Recreation  
Rivers Water  
Weeds Wildlife

Economics  
Fisheries  
Grazing  
Policies and Procedures  
Public Relations, Communication  
Roads

## **APPENDIX F: DUE PROCESS: The Elements of Fair Play**

R. Marlin Smith: Partner, Ross, Hardies, O'Keefe, Babcock & Parsons

Land-use regulation is set against a constitutional backdrop that establishes certain limits for such regulation. Two of the most important of these constitutional limitations come from the Fifth Amendment of the U.S. Constitution, which is made applicable to the state and its instrumentalities by the Fourteenth Amendment, and which provides that no person may be "deprived of life, liberty or property, without due process of law . . . ." This requirement of due process has two aspects, commonly called procedural due process and substantive due process.

The constitutional requirement of procedural due process essentially requires that the procedures used in decision making -- whether it be administrative or judicial decision making -- be fair, giving all interested persons an adequate opportunity to make their views heard. Substantive due process is the term sometimes applied to the constitutional requirement that statutes, ordinances, rules, and decisions must not be arbitrary or capricious. That is, there must be a rational relationship between the exercise of legislative or rule-making authority and the achievement of some legitimate public purpose.

### **PROCEDURAL DUE PROCESS**

The constitutional requirement of fair procedures has nine general aspects:

(1) NOTICE. Adequate and timely notice of proceedings and of the proposed decision-making or rule-making process is a fundamental aspect of due process. The U.S. Supreme Court, in a frequently cited decision [Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950)], has said that notice must be ". . . reasonably calculated, under all the circumstances, to apprise interested parties of the tendency of the action and afford them an opportunity to present their objections. . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance. . . ."

Both the enabling acts of the various states and municipal zoning ordinances usually provide that notice of both legislative hearings and administrative hearings on zoning matters be given in some fashion to all interested parties. Due process requires that the owner of the land and other interested persons be given prior notice before any action is taken which would make a material change in the regulations applicable to a particular parcel, or group of parcels, of land [Gulf and Eastern Development Corp. v. City of Fort Lauderdale, 354 So.2d 57 (Fla. 1978); American Oil Corp. v. City of Chicago, 331 N.E.2d 67 (Ill. App. 1975); Nesbit v. City of Albuquerque, 575 P.2d 1340 (N.M. 1977)]. Publication is the most commonly required form of notice, although posting on the property affected is also frequently required. In some circumstances, such as where a proposed condemnation is involved, publication and posting have been held insufficient notice [Schroeder v. City of New York, 71 U.S. 208 (1962)]. Increasingly, statutes and

municipal ordinances have required that notice be mailed, usually by certified mail, to all property owners (or taxpayers of record) within a specified distance of the property which will be affected by the zoning action.

The notice must be adequate: the average citizen reading it, whose rights may be affected, must understand the general purpose, nature, and character of the proposed action [Moore v. Cataldo, 249 N.E.2d 568 (Mass. 1969); Nesbit v. City of Albuquerque, *supra*, Note 2; Yoga Society of New York v. Town of Monroe, 392 N.Y.S.2d 81 (App. Div. 1977); Sellers v. City of Asheville, 236 S.E.2d 283 (N.Car.App. 1977); Barrie v. Kitsap County, 527 P.2d 1377 (Wash. 1974)]. Moreover, there is some authority for the view that an application for one type of zoning relief cannot rest on public notice for a different type of relief. Thus, for example, an applicant cannot be given a special-use permit when the notice stated that he was seeking a variation. [See, Foland v. Zoning Board of Appeals, 207 N.Y.S.2d 607 (N.Y.S. Ct. 1960) and Village of Larchmont v. Sutton, 217 N.Y.S.2d 929 (N.Y.S.Ct. 1961).]

The timeliness of the notice is also important. Minimum notice times are ordinarily specified in state enabling legislation and in municipal ordinances. A zoning action that does not comply with these statutory time periods is invalid [Lunt v. Zoning Board of Appeals, 191 A.2d 553 (Conn. 1963); Slagle v. Zoning Board of Appeals, 137 A.2d 542 (Conn. 1957); George v. Edenton, 230 S.E.2d 695 (N.Car.App. 1976); Sibarco Stations, Inc. v. Town Board of Vestal, 288 N.Y.S.2d 8 (N.Y.App. Div. 1968)].

To summarize, procedural due process demands that there must be notice of an action, it must adequately apprise interested persons of the intended action, and it must be given within the prescribed time periods and within sufficient time to allow interested individuals to make appropriate preparations.

(2) OPPORTUNITY TO BE HEARD. It is central to the concept of procedural due process that all persons interested in a prospective decision be given an opportunity to offer their views and to supply evidence in their support. This concept is embodied in the virtually uniform requirement that there be no changes in zoning regulations, and that no special permits, special exceptions, or variations be granted until a public hearing has been held. The failure of a local legislative body to conduct an appropriate hearing that gives everyone a fair opportunity to be heard may invalidate any subsequently adopted ordinance or regulation. [See, e.g., Bowen v. Story County Board of Supervisors, 209 N.W.2d 569 (Iowa 1973); Baltimore v. Mano Swartz, Inc., 299 A.2d 828 (Md. 1973); and Lima v. Robert Slocum Enterprises, 331 N.Y.S.2d 51 (App. Div. 1972).]

The hearing must be open to the public. Any decision that is based on proceedings held in a closed session, with the public excluded, will be held void [Blum v. Board of Zoning and Appeals, 149 N.Y.S.2d 5 (N.Y.S.Ct. 1956)]. While there are some older court decisions that support the view that private deliberations prior to a public vote are permissible, an increasing number of states have adopted open meeting or "sunshine laws" which require that the deliberations of local governmental bodies, as well as the

actual vote, be public. The Washington and Oregon courts have carried this requirement a step further by holding that local boards and commissions may not even receive information outside of the presence of all of the parties [Smith v. Skagit County, 453 P.2d 832 (Wash. 1969) and Fasano v. Board of County Commissioners of Washington County, 507 P.2d 23 (Ore. 1973)].

A hearing in which there is no meaningful opportunity to be heard and which in fact frustrates the right of persons to be heard is no hearing at all. One such case was described by Justice Grice of the Georgia Supreme Court in *Pendley v. Lake Harbin Civic Ass'n*, [198 S.E.2d 503 (Ga. 1973)].

The evidence in this complaint for injunctive relief shows 36 zoning petitions were scheduled to be heard before the Commissioners of Clayton County on October 11, 1972, at 7:30 o'clock p.m.; that the hearings continued until 3:30 o'clock a.m., October 12, 1972; that from 1,200 to 1,500 people were present to attend the public meeting; that the hearings were held in the commissioners' hearing room, which accommodates approximately fifty people; that there were three other larger rooms in the courthouse where the hearings could have been legally held; that people were packed so closely in the entire corridor outside the hearing room that those interested in various petitions could not get close to the door, much less inside the hearing room.

The record discloses substantial evidence to support the findings of the trial judge, such as the following. One man swore that when he arrived for the hearing there was already an "enormous" crowd gathered in the hearing room and the hallway outside; that it took him thirty-five minutes to get from the hallway into the hearing room, which he managed only through the help of friends who were already inside; that there were no microphones in use and it was difficult to hear the proceedings even inside the hearing room; that when he asked the commissioners to clear the hearing room to let in persons who want to speak pro or con on each petition in turn they took no action on the request; and that he then left the hearing to enable some other interested person to have a chance to get in.

The Georgia court, in holding that there had been no public hearing under such circumstances, referred with approval to this ruling of the trial court:

Zoning is a matter of highest governmental business. The government's business should not be conducted in unreasonable places, at unreasonable hours. To do so would seem to defeat the intent of the General Assembly to ensure reasonable, orderly, and public hearings when required by law. The court finds that conducting the county business of zoning after mid-night and into the early morning hours, and on a day other than as previously advertised, and in one of the small public meeting rooms in the courthouse where only a small number of the approximately 1,200 to 1,500 people present had access, was unreasonable to the extent that the general public was deprived of an effective, meaningful public hearing before the commissioners of Clayton County to which they were entitled by law.

Although the more generally accepted view is still that decisions with respect to the zoning of particular tracts of land are legislative decisions [see *Meyer v. County of Madison*, 287 N.E.2d 159 (Ill.App. 1972); *Golden Gate Corp. v. Town of Narragansett*, 359 A.2d 321 (R.I. 1976); and *Charlestown Homeowners Ass'n. v. LaCoke*, 507 S.W.2d 876 (Tex. Civ.App. 1974)], there have been an increasing number of decisions which have followed the lead of the Oregon Supreme Court in *Fasano v. Board of County Commissioners of Washington County* [supra, Note 9], in holding that when the local legislative body is considering a rezoning or a request to use a tract of land in a particular way, then the decision is not legislative at all but is in fact a quasi-judicial decision [Snyder v. City of Lakewood, 542 P.2d 371 (Colo. 1975); *Lowe v. City of Missoula*, 525 P.2d 551 (Mont. 1974); *Fleming v. City of Tacoma*, 81 Wash.2d 292, 502 P.2d 327 (1972); and *Golden v. Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978)]. The distinction is of great importance because, as the *Fasano* decision indicates, if the local hearing is regarded as quasi-judicial or adjudicative, rather than legislative, then all interested persons are entitled to a "trial type" hearing, whereas less rigorous procedures will satisfy due process requirements when the matter to be determined involves issues of legislative fact or recommendations with respect to public policy.

(3) THE RIGHT OF CROSS-EXAMINATION. When the hearing is regarded as adjudicative or quasi-judicial, all parties must be accorded the opportunity to question their opponents and the opposing witnesses. Courts have generally been reluctant to hold that cross-examination is a necessary element of fair procedure in legislative hearings, perhaps because of a concern that local boards are inadequately equipped to deal with evidentiary rules. However, one recent Illinois decision has required that an opportunity to cross-examine be afforded in legislative hearings. In *E & E Hauling v. County of Du Page*, [396 N.E.2d 1260 (Ill.App. 1979)], the court held that a zoning board of appeals, sitting to consider a proposed rezoning with respect to which it would only make a recommendation to the county board, must not only give interested persons the right to appear and give evidence but must also give them the right to examine witnesses offered by opposing parties. In an earlier Connecticut decision, the Supreme Court of that state had explained why the right to cross-examination was an important aspect of fair procedures: "...[a zoning board] often deals with important property interests; and a denial of a right to cross-examine may easily lead to the acceptance of testimony at its face value when its lack of credibility or the necessity for accepting it only with qualifications can be shown by cross-examination" [*Wadell v. Board of Zoning Appeals*, 68 A.2d 152 (Conn. 1949)].

The *Wadell* decision makes a persuasive argument that, to the greatest extent possible, local zoning boards should not accept testimony offered at its face value. By permitting the cross-examination process to disclose the extent to which the testimony should be credited or qualified, local hearings will be made procedurally fairer.

(4) DISCLOSURE. There must be an opportunity to see, hear, and know all of the statements and evidence considered by the body making the local decision. Private

communications with the decision makers, called ex parte communications, destroy the credibility of the hearing process and deprive it of an appearance of fairness. The decisions in the state of Washington have developed the requirement that a public hearing must not only be fair, it must appear to be fair. Thus, in *Smith v. Skagit County* [supra, Note 9; cf. *Fasano v. Board of County Commissioners of Washington County*, Supra, Note 9], the court invalidated a decision that rested in part on information received at a meeting from which the public and opponents of the proposal were excluded. In that case, the court explained:

It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, in appearance as well. A public hearing, if the public is entitled by law to participate, means then a fair and impartial hearing. When applied to zoning, it means an opportunity for interested persons to appear and express their views regarding proposed zoning legislation .... The term "public hearing" then presupposes that all matters upon which public notice has been given and on which public comment has been invited will be open to public discussion and that persons present in response to the public notice will be afforded reasonable opportunity to present their views, consistent, of course, with the time and space available. Where the law expressly gives the public a right to be heard . . . the public hearing must, to be valid, meet the test of fundamental fairness, for the right to be heard imports a reasonable expectation of being heeded. Just as a hearing fair in appearance but unfair in substance is no fair hearing, so neither is a hearing fair in substance but appearing to be unfair.

One of the commonest breaches of the right of interested parties to have an opportunity to be acquainted with, and to respond to, all of the information received by the decision-making body is the practice of considering staff reports which have not been circulated to the interested parties or which are not made available in advance of the hearing. It is not unusual for plan commissions and zoning boards to receive such staff reports at the last minute, or even after the public hearing has closed, without those reports ever having been distributed to members of the public and interested persons given the opportunity to peruse them and to respond to assertions made in them. The failure to disclose all of the information that is taken into account by the decision-making body destroys the fairness of the decision-making process and may be held to deprive the parties of procedural due process.

(5) FINDINGS OF FACT. When an administrative decision is involved, the findings or reasons for the decision are an essential aspect of due process. In some instances, the applicable statute or ordinance requires findings of fact and in others, the courts have imposed that requirement. [See, e.g., *Shay v. District of Columbia Board of Zoning Adjustment*, 334 A.2d 175 (D.C. App. 1975); *Reichard v. Zoning Board of Appeals*, 290 N.E.2d 349 (Iii.App. 1972); *Metropolitan Board of Zoning Appeals v. Graves*, 360 N.E.2d 848 (Ind. App. 1977); *Bailey v. Board of Appeals of Holden*, 345 N.E. 2d 367 (Mass. 1976); and see generally, 3 Rathkopf, *The Law of Zoning and Planning*, pp. 37-69

to 37- 70 (4th ed., 1980)]. Findings of fact are ordinarily not required where the decision is characterized as a legislative one. This means that in most zoning actions findings of fact are not necessary. However, one consequence of the Fasano rule in the Washington courts has been a requirement that rezoning decisions with respect to particular parcels of land, which are characterized as quasi-judicial, be supported by adequate findings of fact. The Oregon Supreme Court held in *South of Sunnyside Neighborhood League v. Board of Commissioners*, [569 P.2d 1063 (Ore. 1977)] that while no particular form for such findings is required, there must be a clear statement of what the decision-making body believed to be all of the relevant and important facts on which it based its decision. In that case, the court found that the very generalized findings were too incomplete and speculative to meet the requirement that there be adequate findings. Certainly, it is not sufficient for the decision-making body simply to parrot the words of the statute and call its product findings of fact [*Harber v. Board of Appeals*, 228 N.E.2d 152 (Ill.App. 1967)].

Some years ago, Justice Smith of the Michigan Supreme Court, in *Tireman-JoyChicago Improvement Ass'n. v. Chernick*, [105 N.W.2d 105 (Mich. 1960)], gave vent to an expression of Judicial exasperation with generalized and uninformative "findings" by a local zoning board: Appellants complain of variances (exceptions) granted by defendant Board of Zoning Appeals without rhyme or reason. They say that the ordinance permitting the grant of variances is vaguely phrased and without specific standards (for example, "unnecessary hardship" is a ground). In addition, they complain that the Board's action here was "wholly unwarranted under the facts." What, in truth, was the warrant for the Board's action? We are not told. The Board says we do not have to be told.

Thus, under the Board's argument, the citizen gets it going and coming. Were the legislative standards followed by the Board? There are no specific standards to be followed. What, then, are the reasons for the Board's finding the broad standard of "unnecessary hardship" to be satisfied? No one knows. No reasons are given, in other words it boils down to this: there is unnecessary hardship because there is unnecessary hardship, and, because there is unnecessary hardship, the standard (of unnecessary hardship) is satisfied. Thus, by mumbling an incantation the bureaucrat forecloses effective judicial review. Explicit and careful findings of fact enable all persons interested in the local decision to know just exactly what was decided. That, too, is an essential element of procedural due process.

(6) CONFLICTS ON INTEREST AND THE APPEARANCE OF CONFLICT OR IMPROPRIETY. When a local official has a direct or indirect financial interest in the decision, that decision is infected with the potential bias of the individual and will not be permitted to stand. [See *Low v. Madison*, 60 A.2d774 (Conn. 1948); *Olley Valley Estates, Inc. v. Fussell*, 208 S.E.2d 801 (Ga.1974); and *Cra11 v. Leonminster*, 284 N.E.2d 610 (Mass. 1972).]

The appearance of fairness doctrine developed by the Washington courts mentioned above, has been applied quite frequently to invalidate decisions in which the interest of one of the decision makers deprives the decision of the appearance of fairness. In

Fleming v. City of Tacoma, [502 P.2d 327 (Wash. 1972)], one of the councilmen was employed as an attorney by the successful petitioners for a rezoning amendment less than 48 hours before the city council voted on the request. The Washington Supreme Court held that the proceeding in which the amendment was approved was fatally infected by the appearance of unfairness created by the councilman's conduct.

Consequently, the ordinance was declared invalid--even though the vote of the councilman in question was not necessary to pass the ordinance.

Subsequent Washington decisions have set aside a rezoning ordinance because two members of the planning commission were closely associated with a community organization whose members would benefit financially from the proposed rezoning [Save a Valuable Environment v. City of Bothel, 57 P.2d 401 (Wash. 1978)]. A decision has even been invalidated when it appeared that a member of the local decision-making body had an interest that might have influenced his vote, although in fact it did not [West Slope Community Council v. City of Tacoma, 569 P.2d 1183 (Wash. App. 1977)].

In Buell v. City of Bremerton, [495 P.2d 1358 (Wash. 1972)], the court applied the appearance of fairness rule to invalidate a zoning decision when the chairman had a possible interest because his property might appreciate in value as a result of the zoning. The court noted that the fact that the action could be carried without counting the chairman's vote was not determinative; the self-interest of one member of the planning commission could affect the action of the other members of the commission regardless of the fact that they themselves were disinterested. A New York court has gone so far as to invalidate a local planning decision because the controlling vote was cast by a town board member who was a vice-president of a large advertising agency that the court assumed might be "a strong contender" for obtaining advertising contracts for the project. The court preferred to believe that the board member's vote was prompted by the "jingling of the guinea" rather than by his conscience. So the court invalidated the decision, saying "like Caesar's wife, a public official must be above suspicion." [See Tuxedo Conservation and Taxpayers Asstn. v. Town Board of the Town of Tuxedo, 418 N.Y.S.2d 638 (App. Div. 1979).]

(7) PROMPT DECISIONS. Even adequate and timely notice, a full and completely fair public hearing, and absolute impartiality (free of any taint of bias) on the part of the decision-making officials do not guarantee due process unless a decision is made promptly. The parties to a contested land-use decision have a right to expect prompt decisions, and failure to provide this is itself a failure to provide fair procedures.

In recent years, especially in environmental impact litigation, there has been a tendency for opponents of the project to use the environmental review process solely for the purpose of securing a delay in the ultimate decision. The decision-making body that permits itself to be a party to such procrastination effectively denies one or more of the groups involved the process to which they are constitutionally entitled.

(8) RECORDS OF PROCEEDINGS. Finally, it is central to the concept of procedural due process that complete and accurate records be kept of proceedings -- more than just skeletal minutes of what transpired. All exhibits must be preserved and there must be a stenographic record of all testimony heard, and all of the statements made. Anything less will deprive the judiciary of the opportunity to engage in a meaningful review when the dispute finally reaches the judicial system. In *McLennan v. Zoning Hearing Board of Mount Pleasant Township*, [304 A.2d 520 (Pa. Comm. 1973)], the court expressed its exasperation with being required to review judicially a local zoning decision on a totally inadequate record: "These ordinances are absent from the record, and we are mystified as to how we are to decide this appeal without them. Additionally, the Zoning Hearing Board merely kept a summary of the proceeding before it and made no stenographic record. In *Camera, Jr. v. Danna Homes, Inc.*, 6 Pa. Commwlth. 417, 296 A.2d 283 (1972), we remanded because the testimony was paraphrased by the Board's secretary rather than taken verbatim."

Like the requirement that decisions be made promptly, the requirement that a complete and adequate record be kept is central to due process. No hearing can be considered to have been a fair hearing if the matters taken into account by the decision-making body cannot be reconstructed when its decision is reviewed by others.

(9) SOME GROUND RULES FOR FAIR HEARINGS. No local decision-making body can conduct business in an orderly and efficient manner unless it has a set of rules which are available to any person who appears before the body. Unless the participants in the local hearing process can know the ground rules that will govern the hearing, they cannot adequately prepare themselves for the hearing. Nothing more surely deprives an individual of due process than if the parties to a proceeding are permitted to guess what the procedures will be or, even worse, to prepare on the assumption that one set of rules will be followed only to have them changed by the decision-making body at the last second.

A local decision-making body, such as a zoning board or a plan commission, should, at the start of every hearing, recite briefly the rules that will be followed during the course of the hearing so that everyone understands in advance what procedures will be employed.

Disclosure of all of the information taken into account by the decision-making body is a critical element of procedural due process. However, disclosure of that information prior to the hearing contributes to the fairness of the hearing and also to the efficiency with which it can be conducted. Parties expecting to present evidence at a hearing should be required to supply in advance a list of the witnesses they propose to call and a brief summary of the testimony that they expect to elicit from those witnesses. Any reports or studies prepared by a party for introduction at the hearing should be on file in advance so that they can be studied by other interested persons and so that copies for review and critique can be made at leisure. Staff reports should not be concealed until the penultimate moment before the decision is made; they should be prepared and circulated

in advance. The objective of procedural due process is to guarantee that the decision-making body has before it all of the information that is pertinent to its decision in a fashion that is calculated to ensure, at best it can be done, that the decision-making process will be open, fair, and thorough -- which is the essence of the constitutional concept of procedural due process.

(10) SUBSTANTIVE DUE PROCESS. Plan commissions, zoning boards, and local governing bodies must be concerned not only with whether their procedures are fair, but also with whether the decisions they make are substantively constitutional. In its substantive aspects, the constitutional guarantee of due process is an assurance that no person will be deprived of his property for arbitrary reasons. A restriction on, or a deprivation of, rights in property is constitutionally supportable only if the conduct or use of property is restricted by reasonable legislation reasonably applied. That is, the legislation must be within the scope of the authority of the legislative body, rationally related to the achievement of a legitimate public purpose and applied for a purpose that is consistent with the purpose of the legislation itself. (See *State v. Johnson*, 265 A.2d 711 (Maine 1970) and 1 Rathkopf, *The Law of Zoning and Planning*, pp. 6-10 to 6-11 (4th ed., 1980).]

The rule that regulation must meet substantive due process standards usually means, in the context of zoning ordinances, that the question of whether a zoning ordinance meets or does not meet that test depends, in part, on whether there is a reasonable use to which the property can be devoted under the restrictions in question. Zoning restrictions do not fail substantive due process standards simply because the landowner cannot devote his property to its most profitable use. [*Arverne Bay Construction Co. v. Thatcher*, 278 N.Y. 222, 15 N.E.2d 587 (1938); *McCarthy v. City of Manhattan Beach*, 41 Cal.2d 879, 264 P.2d 932 (1953); *Trever v. City of Sterling Heights*, 53 Mich.App. 144, 218 N.W.2d 810 (1974); *Guaclides v. Borough of Englewood Cliffs*, 11 N.J.Super. 405, 78 A.2d 435 (1951); *Dusi v. Wilhelm*, 25 Ohio Misc. 111, 266 N.E.2d 280 (1970). Occasionally, limitations on the use of land that really do not permit any reasonable use have been sustained. See *Consolidated Rock Products v. City of Los Angeles*, 57 Cal.2d 515, 20 Cal. Rptr. 638, 370 P.2d 342 (1962).]

This is a typical way that the courts phrase the reasonable use rule: "To sustain an attack upon the validity of the ordinance an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions upon his property preclude its use for any purpose to which it is reasonably adapted" [*Arverne Bay Construction Co. v. Thatcher*, *supra*, Note 29].

In some decisions, the question of whether regulations meet substantive due process Standards is decided by attempting to balance the burdens imposed on the landowner against the public benefit secured by the regulations. A typical formulation of this "balancing" test is:

...if the gain to the public is small when compared with the hardship imposed upon individual property owners, no valid basis for an exercise of the police power exists. It is not the owner's loss of value alone that is significant but the fact that the public welfare does not require the restriction and the resulting loss. Where, as here, it is shown that no reasonable basis of public welfare requires the restriction and resulting loss, the ordinance must fail and in determining whether a sufficient hardship on the individual has been shown the law does not require that his property be totally unsuitable for the purpose classified. It is sufficient that a substantial decrease in value results from a classification bearing no substantial relation to the public welfare. [Weitling v. County of Du Page, 186 N.E.2d 291 (Ill. 1962).]

In recent years, the courts have increasingly looked for evidence of a comprehensive planning process as the underpinning for municipal land-use regulations and as the best assurance that regulations will meet substantive due process standards. [Udell v. Haas, 288 N.Y.S.2d 888 (N.Y. 1968); Raabe v. City of Walker, 174 N.W.2d 789 (Mich. 1970); Forestview Homeowners Ass'n. v. County of Cook, 309 N.E.2d 763 (Ill.App. 1973); Dayless County v. Snyder, 556 S.W.2d 688 (Ky. 1977); and Fasano v. Board of County Commissioners of Washington County, supra, Note 9.] The courts are recognizing the fact that a decision made in the context of overall land-use policies is much less suspect than a decision made ad hoc, quite frequently in the midst of intense controversy.

## **CONCLUSION**

The procedural and the substantive aspects of due process have become much more important to both landowners and local officials since the U.S. Supreme Court, in *Owen v. City of Independence*, [445 U.S. 622 (1980)], decided that any constitutional violation by local government, whether procedural or substantive, could subject the municipality to a damage award under Section 1983. The dissent of Justice Brennan in the recent decision by the Court in *San Diego Gas and Electric v. City of San Diego*, [44 CCH Sup. Bulletin, B 1594, B1635 (1981)] plainly indicates that at least some members of the Court are interested in encouraging municipalities "to err on the constitutional side of police power regulations." Thus, municipal officials must continually be aware of the limits imposed on them by both procedural and substantive rules of due process.

# APPENDIX G: A FRAMEWORK FOR COORDINATION

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CARTER COUNTY

2/10/2025 At 3:00 PM

Recorded 2/ 0/2025

*Dana Eschelman*

Judy Wright, Cll< & Rcdr By

Return to: FILED-CARTER COUNTY

## RESOLUTION 02102025-02

### BOARD OF COUNTY COMMISSIONERS CARTER COUNTY, MONTANA

Resolution of the Board of County Commissioners, Carter County, Montana.

WHEREAS, Montana statutes provide for counties to improve the present health, welfare, and safety of its citizens and recognize the need of the agriculture industry and business for future growth; and

REAS, the State of Montana has enacted laws which empower the County Commissioners to develop land use, resource management, and environmental planning processes necessary to serve the public health, safety, convenience and welfare; and

WHEREAS, The Land Use Planning section under Title II of the Federal Land Policy and Management Act of 1976 (FLPMA) Sec. 202 - Land Use Planning, requires a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences consistent with the principles of multiple-use and sustained-yield as provided for in other applicable law; <sup>1</sup> and

WHEREAS, the Federal Land Policy and Management Act of 1976 and other federal laws require that all federal agencies shall consider, to the maximum extent required by law, County Land Use plans and policies, and coordinate with Montana boards of County Commissions for the purpose of planning and managing federal and state lands within the geographic boundaries of a county. <sup>2</sup>

WHEREAS, the National Environmental Policy Act, and the Council on Environmental Quality Regulations at 40 CFR, Section 1506.2 and other regulation and the Intergovernmental Cooperation Act provide mechanisms for intergovernmental coordination and cooperation and joint environmental planning; and

WHEREAS, the National Environmental Policy Act, and the Council on Environmental Quality Regulations require that the assessment of the direct, indirect, and cumulative effects of Federal agency planning decisions on the environment including the ecological, aesthetic, historic, cultural, economic and other impacts that may occur as a result of private and/or governmental actions.

WHEREAS, The Secretaries of Agriculture and Interior are to the maximum extent to which federal law permits coordinate the land use inventory, planning, and management activities of or

<sup>1</sup> 43 U.S.C. 1712(c)(1)(2)

<sup>2</sup> 43 U.S.C. 1712(a)(9); 43 CFR 1610.4 — 1-9 Resource management planning process.; 43 C.F.R. Section 1610.3-1 "In providing guidance to BLM personnel, the BLM State Director shall assure such guidance is as "consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other State agencies, Indian tribes and local governments that may be affected...."

for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located.

WHEREAS, Carter County has adopted a land use plan which sets forth a general declaration of the County's customs, culture, and economic stability and provides a framework for the analysis and resolution of land planning issues including environmental, social, cultural and other impacts that may occur as a result of private and/or governmental action.

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Carter County, Montana, that Carter County has established a Planning Board according to State law and has adopted a master plan for Carter County.

THEREFORE, in compliance with federal statutes, federal agencies to the extent bound by federal law and regulation shall inform local governments of all pending actions affecting local communities and citizens and coordinate with them in the planning and implementation of those actions. The Carter County Commission, shall be consulted and coordinated with in accordance with the constitutions and Laws of Montana and the United States.

Regarding any actions undertaken by the Federal land management agencies that consider, propose, or take any action that may affect or have the potential of affecting the use of land or natural resources in Carter County, Montana. Carter County shall encourage the Federal land management agencies to the fullest extent:

- A. Consider the effects such actions have on (i) community stability; (ii) maintenance of custom, culture and economic stability; and (iii) conservation and use of the environment and natural resources, as part of the action taken; and
- B. coordinate procedures to the fullest extent possible with the County, prior to and during the taking of any federal action; and
- C. establish a process for such coordination, with the County by understanding or other agreement binding on the agencies including joint planning, joint environmental research and data collection, joint hearings, and joint environmental assessment; and
- D. submit a list and description of alternative in light of possible conflicts with the County's ordinances, policies and plans, including the Comprehensive Plan; consider reconciling the proposed action with the County's ordinances, policies and plans, including the Comprehensive Plan; and after such consideration, take all practical measures to resolve such conflict and display the results of such consideration in appropriate documentation; and
- E. assume that any proposed actions will have a significant impact on County conditions and that coordination and consultation

with the County and review of data specific to the County is a necessary

## Bk 139-MIS Pg 717

prerequisite to all such planning activities; and

F. coordinate, in absence of a direct constitutional conflict, with the County to comply with Federal statutes and regulations, and County ordinances, policies and plans, including the Comprehensive Plan; and


G. adopt appropriate mitigation measures with the concurrence of the County to adequately mitigate adverse impacts on local culture, custom, economic stability or protection and use of the environment; and

H. preserve private property rights of citizens of Carter County against violation through regulatory means or otherwise.

I. ensure that land tenure adjustments for any government agency should provide for no net loss of private land, private property rights and interests including investment backed expectations, or loss of property tax revenue to Carter County.

BE IT FURTHER RESOLVED, that Carter County, Montana, notify all Federal agencies administering land or conduction programs in Carter County, Montana, of adoption of this resolution and of the County's request for inclusion in all planning processes to the fullest extent required or permitted by law and in particular the Federal Land Management and Policy Act, the Administrative Procedures Act, the Public Rangeland Improvement Act, the Taylor Grazing Act, and the National Environmental Policy Act.

Enacted in open session of the Commission on the) Othis day of\_\_\_\_\_, 2025.

 2-10-25  
Rod Tauck, Chairman

 2-10-2025  
Pam Castleberry, Commissioner

 10 Feb. 25  
Dan Dinstel, Commissioner

183498

# CARTER COUNTY COMMISSIONERS

Copy

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Irma Nansel, Miles City Field Office  
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**RE: Snowy River CO2 Sequestration Project ePlanning NEPA Number DOI-BLM-MT-C020-20230070-EA February 2024**

With the new federal administration and subsequent shift in priorities we believe there are significant issues with the analysis performed by BLM regarding the Snowy River CO2 Sequestration Project (Snowy River Project). The EA performed by BLM relied on and cited now rescinded climate change executive orders, non-binding CEQ guidance, and even decarbonization objectives under the Paris Agreement.

The Climate-Policy Agenda (CPA) inappropriately relies upon top-down executive directives and international guidance while significantly diminishing intergovernmental coordination with political subdivisions of the United States. The CPA agenda has resulted in a fragmented public record, and diminished the role, power, and authority of State and local governments by removing parity they have in land-use planning. The institutionalization of climate change theory into executive branch policy by the former administration imposed vast transformative impacts on the economy of the United States and political process. This is evidenced by dozens of rules and guidance that were issued and promulgated within the Department of Interior (DOI) and other federal departments pursuant to their climate action plans which includes the recent decision to shut off all further leasable coal within the Powder River Basin.<sup>1, 2</sup>

President Trump signed Executive Order 14148<sup>3</sup> and 14154<sup>4</sup> on January 20<sup>th</sup>, 2025, revoking executive orders 13990 and 14008 both of which set the regulatory and policy setting for the Snowy River EA.<sup>5</sup> Subsequent to this Secretary of Interior Doug Burgum issued Secretarial Order 3418<sup>6</sup> on February 3<sup>rd</sup>, 2025, to implement the priorities set out in EO 14154. This Secretarial Order directs among other things the assistant secretaries to,

*“Take all necessary steps to ensure any actions taken to implement the revoked EOs are terminated, including but not limited to, terminating any contract or agreement on behalf of entities or programs abolished in the revoked EOs.” P. 3*

The Miles City Field Office Supplemental Environmental Impact Statement for the Powder River Basin specifically mentions the Snowy River Project as a responsive action to accomplish the 2050 net-zero objectives established under EO 14008.

<sup>1</sup> Federal Register :: Notice of Availability of the Proposed Resource Management Plan Amendment and Final Supplemental Environmental Impact Statement for the Miles City Field Office, Montana

<sup>2</sup> Final-MtNKC-protest-miles-city-field-office-coal-24.06.17.pdf

<sup>3</sup> Federal Register :: Initial Rescissions of Harmful Executive Orders and Actions

<sup>4</sup> Federal Register :: Unleashing American Energy

<sup>5</sup> Snowy River CO2 Sequestration Project ePlanning NEPA Number DOI-BLM-MT-C020-2023-0070-EA February 2024, p. 31 <sup>6</sup> so-3418-signed.pdf

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The Snowy River Project EA specifically states,

*“An important note to this analysis is that the MCFO SEIS explicitly mentions the proposed action (the proposed CO2 injection project in Carter County) as a responsive action to the 2050 net-zero goal outlined in EO-14008.”* P.33 (emphasis ours)

Furthermore, the EA states that the Snowy River Project would help achieve the nationally determined contributions for decarbonization established under EO 14008 and the Paris Agreement. The Paris Agreement was never ratified by 2/3<sup>rd</sup> approval of the Senate and therefore had no authoritative basis to drive domestic policy and or objectives. The Congress was explicit in declaring in the Federal Land Management and Policy Act that all goals and objectives utilized to guide public land use planning are to be established by law.<sup>7</sup> Executive edicts committing to and establishing international goals and objectives fail to meet this plain statutory policy.

The Snowy River EA states,

*“Consistent with EO 14008 (discussed previously in Section 3.2.1, Climate Change Regulatory Setting), the United States has established an economy-wide target of reducing its net GHG emissions (including anthropogenic and natural GHG emissions as well as GHG removals by sinks) by 50 percent to 52 percent below 2005 levels in 2030 in its Nationally Determined Contribution under the Paris Agreement (UNFCCC 2021). The sequestration of CO2 from the proposed Project, a GHG sink, would help achieve this national level goal.”* P. 41

Under regulatory and policy settings the EA further points to EO 14008, 13990, and CEQ guidance on consideration of greenhouse gas emissions and climate change including the estimate of the social cost of greenhouse gas emissions (SC-GHG).<sup>8</sup> The EA itself on p. 42 acknowledges the uncertainty and speculation inherent in the SC-GHG estimates. The interagency working group (IWG) established by EO 13990 has been disbanded and all guidance, instruction, recommendation, or document issued by the IWG is withdrawn as no longer representative of governmental policy.

<sup>7</sup> 43 U.S.C. 1701(a)(7) The Congress declares that it is the policy of the United States that goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law

<sup>8</sup> “Executive Order (EO) 14008, Tackling the Climate Crisis at Home and Abroad, was signed by President Biden on January 27, 2021. The EO focuses on prioritizing climate in foreign policy and national security and taking a government-wide approach to the climate crisis. The EO also establishes the National Climate Task Force, which “shall facilitate the organization and deployment of a Government-wide approach to combat the climate crisis. This Task Force shall facilitate planning and implementation of key federal actions to reduce climate pollution; increase resilience to the impacts of environmental justice; and spur well-paying union jobs and economic growth. . . . The CEQ issued additional interim guidance on January 9, 2023, titled, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (88 FR 1196) directing federal agencies to consider all available tools and resources in assessing GHG emissions and climate change effects of their proposed actions under NEPA. This guidance, effective upon publication, builds upon and updates the CEQ’s 2016 Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews.” Snowy River Project EA, P.31

Copy

In conclusion, because the Snowy River Project is a responsive action to implement international 2050 net-zero objectives without explicit Senate concurrence and reliance on now rescinded executive edicts, the project as a whole is called into question. To impose such a project within Carter County based on these objectives has no substantive national benefit and significantly limits potential for oil and gas and other productive development on BLM lands within the county. 9. Carter County is not very enthralled about being host to a carbon offset project. We believe the EA is not adequate for the purpose and if the project is to proceed there needs to be an impacts analysis in full coordination and cooperation with Carter County and affected landowners in the county.

Regards,

Carter County Commissioners

Rod Tauck 3-10-25

Rod Tauck- Chairman

Pamela J Castleberry 3-10-25

Pamela J Castleberry - Vice Chair

Dan Dinstel 10 MAR 25

Dan Dinstel-Member

## **PERTINENT PORTIONS OF 40-CFR FOR PLANNING BOARD CONCERNING COOPERATING AGENCY STATUS**

40 CFR (Code of Federal Regulations) Protection of Environment:

<http://www.epa.gov/lawsregs/search/40cfr.html>

Chapter V ---Council on Environmental Quality

[http://ecfr.gpoaccess.gov/cgi/t/text/textidx?sid=184d642de12103ac26d02c1c2e4c80b7&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv3\\_2\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/textidx?sid=184d642de12103ac26d02c1c2e4c80b7&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv3_2_02.tpl)

### **Index**

<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&sid=39779aba7cbd9aed4b6f59a5704aad05&rgn=div5&view=text&node=40:32.0.3.3.10&idno=40>

Topic	Sections
Cooperating Agency	1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1508.5.

### **1500.5(b),--Purpose**

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§1501.6).

### **1501.1(b),--Purpose**

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document  
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### **1501.5(c),--Lead Agencies**

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

- (1) Magnitude of agency's involvement.
- (2) Project approval/disapproval authority.
- (3) Expertise concerning the action's environmental effects.
- (4) Duration of agency's involvement.
- (5) Sequence of agency's involvement.

### **1501.5(f),**

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

#### **1501.6--Cooperating agencies.**

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in §1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

#### **1503.1(a)(1)--Inviting Comments**

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency, which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

### **1503.2—Duty to Comment**

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in §1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

### **1503.3—Specificity of Comments**

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

### **1506.3(c)—Adoption**

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

#### **1506.5—Agency Responsibility**

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment. Resource Use Plan July 2010 88

(c) Environmental impact statements. Except as provided in §§1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under §1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

#### **1508.5—Cooperating Agency**

Cooperating agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

2) Staff should be allowed to work with a possible action to determine whether it is reasonable that it will become a proposed action and shape the proposal so that it can be intelligently

discussed. Meaningful involvement by the County probably begins at the point the staff recommends that the decision maker consider a discretionary action.

3) Public involvement can be interpreted to require open meetings and that there is no need to have a meeting until the topic can be discussed publicly in a meaningful way. The sharing of technical information does not require a public meeting.

4) Carter County recognizes that the process of coordination, cooperation, and consideration of land and resource planning options place certain responsibilities upon Carter County. To this end Carter County commits itself to respond to agencies enquiries to participate in the process describe herein, and to (show up) before, during, and after the public participation process. Carter County further understands its obligation to share information and ideas with State and Federal agencies, in the similar manner outlined herein. Carter County recognizes that the rights and obligation enumerated in this paragraph reciprocate amongst Local, State, and Federal agencies.

BLM-MOU-MT924-1308

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
BUREAU OF LAND MANAGEMENT, MONTANA STATE OFFICE  
AND  
CARTER COUNTY MUSEUM

This Memorandum of Understanding, between the Bureau of Land Management, Montana State Office (BLM), and the Carter County Museum (Repository), defines the relationship between the Parties and their respective roles in the curation of museum property that has originated from BLM managed lands in the states of Montana, North Dakota, and South Dakota.

## BACKGROUND

Authorities and Standards: This Memorandum is executed pursuant to the following federal authorities and standards: Federal Land Policy and Management Act of 1976 (P.L. 94-579); Antiquities Act of 1906 (P.L. 59-209); Federal Property and Administrative Act of 1949 (40 USC 483); Omnibus Public Lands Management Act of 2009, Paleontological Resources Preservation subtitle (P.L. 111-11, Title VI, Subtitle D); and, Department of the Interior Manual 411 DM (Managing Museum Property); and applicable policy in Bureau of Land Management manuals 8100 (Cultural Resource Management) and 8270 (Paleontological Resource Management); as well as prevailing applicable professional museum and archival practices and standards.

Benefits: This memorandum will benefit the BLM, the Repository, and the American public by formalizing the continuing partnership between the BLM and the Repository for the care and management of Federally-owned museum collections.

1. The BLM's mission of land management and stewardship will benefit by allowing important collections to be removed from public lands in order to facilitate land use activities and research projects. The BLM will also benefit from increased understanding of collections that are generated in support of scientific research and public education.
2. The Repository will benefit by being recognized as an approved repository for holding Federally-owned collections that are within its approved scope of collections statement.
3. The American public will benefit by the assurance that collections from BLM administered public lands are housed in a repository that shares the BLM mission to make collections available for the enjoyment and education of current and future generations through exhibitions, publications, research, and educational outreach.

## DEFINITIONS

*Associated records* means all documentation generated by the activity of collecting and analyzing artifacts, specimens, or other resources that are or subsequently may be designated as museum property. These records are “associated” with objects and specimens generated during such activities.

*Collections* mean material objects that were collected, excavated, or removed from the ground and all associated records.

*Curation* means managing and preserving a collection according to prevailing applicable professional museum and archival practices, as well as, making collections available for exhibit (when state of conservation allows), scientific study, and public education and interpretation.

*Museum property* means an assemblage of museum objects collected according to some rational scheme and maintained so they can be preserved, studied, or interpreted for public benefit.

*Museum records* mean official records that are generated by the museum property system to manage museum property (e.g., accession, catalog, loan, and inventory records).

*Working and Reference Collections* (a.k.a. teaching, study, or education collections) mean organic or inorganic specimens or objects maintained by programs for the purpose of education, identification, or ongoing research. They are not intended for permanent long-term preservation, although some specimens may subsequently be designated museum property. Working and reference collections may or may not be maintained to the standards of museum property and may be consumed or disposed of during the analysis or educational process.

**STATEMENT OF UNDERSTANDING.** The Parties do witness that,

WHEREAS, the long term care and protection of collections for public education, scientific study, and public education and interpretation is a cooperative endeavor between the Repository and the BLM; and

WHEREAS, the BLM is required under Federal law, regulation, and policy to preserve for future use, museum property, as well as, report the type of collections and the condition of repository facilities; and

WHEREAS, the Repository has the mandate to obtain, house, and maintain collections that are appropriate to its mission; and

WHEREAS, the Parties hereto recognize the Federal Government’s continued ownership and control over collections from BLM administered lands; and

WHEREAS, the Parties recognize the mutual benefits derived from having collections suitably housed and maintained by the Repository;

NOW THEREFORE, the Parties do mutually agree as follows:

1. The Repository shall:

- a. Provide long term professional care and management of museum property with equipment, space, and safeguards and perform all work necessary to protect them in accordance with applicable standards and authorities.
- b. Assign an individual who is a qualified museum professional to enact this Memorandum and be the appointed contact to maintain the partnership between the Repository and the BLM.
- c. Ensure that the person(s) providing curation possesses knowledge, experience, and competence appropriate to the nature and content of collections.
- d. Acknowledge the BLM in any exhibit, publication, interpretive panel, or educational program that exhibits or highlights BLM-owned collections.
- e. Implement an access policy that allows the BLM and other authorized individuals, institutions, and agencies access to collections for appropriate uses.
- f. Maintain associated records of collections, including information on the preparation, conservation, study, use, loan, and location of museum property in the care of the Repository; and periodically provide the BLM with a list of all BLM-owned museum property that includes accession numbers, catalog numbers, collector information, and total (or estimated) object counts.
- g. Safeguard access to information relating to the nature, location and character of paleontological resources from which the collections have been excavated or removed, and follow guidelines as provided in **Appendix 1, *Safeguarding Locality or Site information***.
- h. Not approve or perform consumptive analysis on any BLM-owned museum property without prior written approval from the BLM, except as provided as in **Appendix 2, *Consumptive Analysis of BLM Owned Collections***.
- i. Not approve or perform procedures to reproduce (including molding and casting) any BLM-owned museum property without prior written approval from the BLM, except as provided in **Appendix 3, *Reproducing BLM Owned Collections***.
- j. Not transfer, convey, or deaccession any BLM-owned museum property without prior written approval from the BLM.
- k. Not loan any BLM-owned museum property for a term of longer than three years and no loans will leave the borders of the United States of America without prior written approval from the BLM.
- l. Not mortgage, pledge, assign, transfer, give, sublet, exchange, discard, sell or part with possession of any BLM-owned museum property covered by this

Memorandum without prior written permission of the BLM. In addition, not take any action whereby BLM-owned museum property shall or may be encumbered, seized, taken in execution, exchanged, sold, attached, lost, stolen, destroyed, or damaged.

- m. Allow the BLM to perform an assessment of collections periodically in order to determine that the Repository is managing BLM-owned museum property in accordance with applicable professional standards and Federal authorities; or if qualified BLM personnel are not available, perform a self-assessment of collections. The latest assessment will be provided in this Memorandum as **Appendix 4, *Repository Assessment***.
- n. Provide to the BLM a copy of the most current Scope of Collections Statement for inclusion in **Appendix 5, *Repository Scope of Collections Statement***.
- o. Provide to the BLM copies of standard museum documentation, including collections management plan/policy, access policy, ethics policy, deaccession policy, transfer/disposal policy, blank accession receiving form, blank loan forms, and other policy documents that will affect BLM-owned museum property. **Appendix 6, *Repository Policies and Documents***.
- p. Provide to the BLM at least once annually a report that should include, but not necessarily be limited to, a brief summary of the following information: new accessions; full, partial, and random collections inventories; active incoming and outgoing loans; distribution of professional reports and publications; changes in Repository organization and staff; and other information that will help the BLM to track and manage BLM-owned museum property. The report may be brief and coincide with other annual reporting performed by the Repository. The final contents of the report and the date of delivery will be mutually agreed upon by the Repository contact and BLM representative.
- q. Document any BLM-owned property that is determined to not qualify as museum property and may be eligible to be transferred to a working and reference collection.
- r. Report to the BLM the results of any inventory (periodic, partial, or full) that includes BLM-owned collections.
- s. Inform the BLM when a BLM-owned museum property is discovered to be damaged, missing, stolen; if a BLM-owned museum property has been the subject of unlawful activity; or if there is reasonable suspicion that a collection was made in full or partial violation of Federal law or BLM policy.
- t. Inform the BLM in the event that the Repository will be closed, has conditions that cause it to not be minimally compliant with BLM standards for the curation of federally owned collections, may be in financial difficulty, or is otherwise unable to fulfill the terms of this Memorandum.

- u. Assume the costs for transferring BLM-owned museum property to another BLM approved repository in the event that the Repository is closed or becomes unable to manage BLM-owned museum property in a manner that is minimally compliant with existing BLM standards.

2. The BLM shall:

- a. When found to be minimally compliant with BLM standards for the curation of federally owned museum property, recognize the Repository as approved for the care of collections that are within the Repository's stated mission and current scope of collections statement, **Appendix 5, *Repository Scope of Collections Statement***.
- b. Assign a qualified individual as the BLM's representative having full authority with regard to this Memorandum to maintain the partnership between the BLM and the Repository.
- c. Allow the Repository to enter into curation agreements with individuals and organizations (including BLM permittees) that deliver BLM-owned collections to the Repository, and allow the Repository to charge fees for incoming BLM-owned collections. These fees will be assessed to and collected from the person or organization that is making the collection, and not necessarily the BLM.
- d. Work with the Repository, in collaboration with other partners (BLM permittees, qualified experts, etc.), to determine the nature and content of what will be accepted by the Repository as new museum property.
- e. Allow the Repository to assemble working or reference collections with BLM property that has been transferred to the Repository, but will not be accepted as new museum property.
- f. Assume responsibility for one-time costs of curation for BLM-initiated collections that are delivered to the Repository and ensure that the collection is appropriately packaged to applicable curation standards. This includes one-time costs for preparing a collection for curation, initial conservation assessment, standard "box fees," and any other initial one-time costs.
- g. Contingent upon available funding or resources, provide the Repository with expertise, funding, equipment, or materials to facilitate the curation of BLM-owned museum property.
- h. Provide to the Repository locality or site information that is necessary for research or curation of collections and authorize the Repository to share that information for research or curation of the collections with other research or curation partners, as provided in **Appendix 1, *Safeguarding Locality or Site Information***.

- i. Review and approve or deny requests for consumptive analysis of BLM-owned museum property as provided in **Appendix 2, *Consumptive Analysis of BLM Owned Museum Property***.
- j. Review and approve or deny requests for permission to make reproductions of BLM-owned museum property as provided in **Appendix 3, *Reproducing BLM Owned Museum Property***.
- k. Review and approve or deny requests to loan BLM-owned museum property outside of the United States of America.
- l. Review and approve or deny requests for permission to transfer or deaccession BLM-owned museum property.
- m. Perform an assessment of collections periodically in order to determine that the Repository is managing museum property in accordance with applicable professional standards and Federal guidelines; or if qualified BLM personnel are not available, authorize a self-assessment of collections by the Repository. A copy of the latest assessment is provided in this Memorandum as **Appendix 4, *Repository Assessment***.
- n. Investigate any reports of BLM-owned museum property that is reported to be damaged, missing, or stolen, or if BLM-owned museum property has been reported to be the subject of unlawful activity.



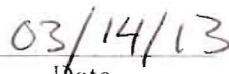
## TERMS AND TERMINATION

1. Nothing in this MOU shall obligate the BLM to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of funds, services, or property between the Parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property shall be made in writing and shall be independently authorized by appropriate statutory authority and regulations, including those applicable to procurement activities.
2. This Memorandum of Understanding supersedes any previous Memorandum and shall be effective upon the date of execution by both Parties and shall remain in effect for five years from the date of the BLM's signing, or until revised, extended, or terminated in writing.
3. The BLM may modify Appendices 1-4 and provide new versions of the Appendices to the Repository without causing termination or modification to this Memorandum.
4. The Repository may modify Appendices 4-6 and provide new versions of the Appendices to the BLM without causing termination or modification to this Memorandum.

5. Either Party may terminate this Memorandum by providing 60 days written notice to the other Party.

## SIGNATURES

In witness whereof, the Parties hereto have executed this Memorandum of Understanding.

 _____ ACTING STATE DIRECTOR Bureau of Land Management Montana State Office	 _____ REPOSITORY AUTHORIZED OFFICER Carter County Museum	 _____ Date
		2/28/13 Date
		03/14/13 Date

## APPENDICES

1. Safeguarding Locality or Site Information
2. Consumptive Analysis of BLM-Owned Museum Property
3. Reproducing BLM-Owned Museum Property
4. Repository Assessment
5. Repository Scope of Collections Statement
6. Repository Policies and Documents

## APPENDIX 1 SAFEGUARDING LOCALITY OR SITE INFORMATION

### PALEONTOLOGY

The Omnibus Public Lands Management Act of 2009 – Paleontological Resources Preservation P.L. 111-11, Section 6304, states: *Specific locality data will not be released by the permittee or repository without the written permission of the Secretary of the Interior.*

P.L. 111-11, Section 6309 states: *Information concerning the nature and specific location of a paleontological resource shall be exempt from disclosure under section 552 of title 5, United States Code, and any other law unless the Secretary determines that disclosure would--*

- (1) further the purposes of this subtitle;*
- (2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and*
- (3) be in accordance with other applicable laws.*

### BLM GUIDANCE

For the purpose of this Memorandum, the BLM directs the Repository to safeguard paleontological locality and site information. This means keeping all information secure and not sharing it without specific authorization from the BLM. However, the Repository will be allowed under the authority of this Memorandum to discretionarily share locality and site information with other BLM partners, including BLM approved repositories, resource use permittees who hold a valid resource use permit, authorized contractors, and other State and Federal agencies. In all cases, the persons or organization receiving the information must have a scope of work or research program that is geographically consistent with the information being shared; and must also be in a partnership with the BLM to not generally share locality or site information. This may be through a separate Memorandum, resource use permit, or by possessing a similar BLM mandate to keep locality and site information secure. Individuals and organizations that may be authorized to receive locality or site information include, but may not be limited to the following:

- Other BLM approved repositories or their staff
- Resource use permittees who hold a valid permit that includes a stipulation for safeguarding locality or site information
- BLM approved contractors who are working on behalf of the BLM
- State Historic Preservation Officers or their staff
- State geologic surveys or agencies that work in partnership with the BLM
- Other Federal agencies that share the same mandate to safeguard locality and site information

The Repository is directed to contact the BLM representative for case-by-case clarification on sharing locality or site information that does not apply to the exceptions listed above. The BLM will not hold the Repository responsible for lost or revealed locality or site data if the Repository has acted in good faith to honor the conditions listed above.

## **AGENCY DETERMINATION**

By signing this Memorandum, the Agency acknowledges that it has determined that discretionarily sharing of locality and site information with Agency partners, including Agency-approved repositories, resource use permittees who hold a valid resource use permit, authorized contractors, and other State and Federal agencies will further the purposes of the aforementioned laws, and not create a risk of harm, theft, nor destruction of the resource or the site containing the resource; and is in accordance with other applicable laws.

## APPENDIX 2 CONSUMPTIVE ANALYSIS OF BLM OWNED MUSEUM PROPERTY

Consumptive analysis (i.e. destructive analysis) of BLM owned museum property is often consistent with the BLM's mandate to manage paleontological resources using scientific principles and expertise. Therefore, the BLM acknowledges the value of consumptive analysis and will consider all legitimate requests of this nature as long as they are not in conflict with other BLM regulations or policies.

Numerous scientific analysis and research methods are an appropriate use of museum property, including methods that consume (i.e., destroy) or alter an object or specimen. Some of these methods include radiometric dating of isotopes, rare earth element (REE) analysis, mass spectrometry, neutron activation, metallography, thin sectioning, and other methods and techniques, including any that have not yet been developed. Generally, the BLM official will not allow uses that would alter, damage, or destroy an object in a collection. However, consumptive analysis may be allowed if such use is necessary for scientific studies or public interpretation and **the potential gain outweighs the potential loss of the object.**

Ideally, consumptive analysis should be limited to unprovenienced, non-unique, non-fragile objects, a sample of objects drawn from a larger collection of similar objects, or a small portion of a large object taken from the least visible area.

### AUTHORIZING CONSUMPTIVE ANALYSIS

All requests for consumptive analysis should originate from the Repository on behalf of the researcher (or research group) that is proposing the project. The Repository should provide a written recommendation as to the merits of the proposed project and appropriateness of the activity, and the rarity of the items posed for such analysis.

Requests for consumptive analysis should include the following information:

- Specimens to be sampled, including catalog numbers
- Description of the analysis, research methods to be employed, and location of the proposed laboratory that would be doing the work
- How the research data will be used
- Time frame to complete the analysis
- Amount of sample to be used
- Merits of the research, including a discussion on the consequences of not attempting the analysis
- Details of disposition of data and sample remains after the analysis is complete

In addition, it is advisable to have written concurrence from a knowledgeable Repository official (i.e. the assigned curator) and an outside researcher (i.e. independent peer review) that use of this technique is appropriate and follows current protocols for such an analysis.

In all cases the authorized BLM official will determine whether to authorize a request to perform consumptive analysis. The BLM may request a second opinion on the merits of an analysis (or portion of analysis) from an outside specialist. If the methods of the analysis are unique or proprietary, the Repository should work with the BLM to ensure that research and information protocols are respected so that novel techniques are not shared with competing laboratories prematurely.

Disputes between the Repository and the individual or team that is proposing the analysis should be settled prior to contacting the BLM. However, in cases where the two parties are unable to agree on the details of a specific consumptive analysis request, the individual or team that is proposing the analysis may submit the proposal directly to the BLM, where the authorized BLM official will work with both parties to determine whether to authorize consumptive analysis after considering both the merits of the proposed analysis and the responsibilities of the Repository, including the obligations set forth in this Memorandum.

## **TERMS AND CONDITIONS**

Consumptive analysis that has been authorized by the BLM will have the following terms and conditions:

- A minimal amount of destruction or consumption will occur commensurate with current scientific research methodology and within the original scope of the authorized request.
- Both the BLM and the Repository shall be acknowledged in all resultant reports and publications and copies of all resultant reports and publications shall be provided to both the BLM and the Repository.
- Raw data and non-consumed samples shall be returned to the Repository and museum records shall be updated.
- All terms and conditions of the active Memorandum continue to apply.
- The BLM may append additional terms and conditions as necessary to preserve the integrity of the collection.
- The Repository may append additional terms and conditions as necessary to preserve the integrity of the collection.

## **ROUTINE CONSUMPTIVE ANALYSIS**

Occasionally, techniques that require the consumption of material are commonly applied, are routine, and involve an extremely small amount of an object, or matrix surrounding the object, so that approval of a proposed analysis should be expedited.

Acting as partners, the BLM and Repository may develop an understanding for routine consumptive analyses where a prescriptive set of conditions may be established that the Repository may follow in order expedite routine methods of analysis. Such a procedure will be set up in advance of the analysis at the discretion of the BLM and appended to this Memorandum. Past performance and the level of partnership between the BLM and Repository will be considered prior to authorizing a program of routine consumptive analysis.

Some examples of routine consumptive analysis may include:

- Carbon 14 dating of charcoal or massive objects
- Carbon or Oxygen isotope analysis of bulk fossil material
- Laser ablation techniques used on non-enamel portions of fossils
- Thin-sectioning of bulk geological samples that are associated with collections
- Samples prepared for mass spectrometry, including for rare earth element (REE) analysis of fossil specimens, radiometric dating, and other studies
- Geochemical sampling of fossil matrix

A program of routine consumptive analysis should include the following prescriptive conditions:

- The method of analysis is commonly applied, professionally established, and has been approved by the BLM in at least one previous request.
- The proposed analysis is approved by the Repository, including at least one curator that is knowledgeable in the techniques that will be employed.
- At least one expert with technical knowledge of the procedure who is not associated with the proposed project concurs with the methods that will be employed.
- The Repository presents a request for consumptive analysis in writing that includes all of the required information (above) and notifies the BLM that the proposed project is for routine consumptive analysis.
- The BLM replies to the Repository within two calendar weeks of receipt of the request with its approval, denial, or request for more information.

Failure of the BLM to reply to a routine consumptive analysis request that fulfills all of the above conditions will indicate that the BLM authorizes the request as presented. All terms and conditions (above) will continue to apply to the analysis. This prescriptive method for authorizing routine consumptive analysis may be revoked or modified by the BLM at any time. However, the BLM will not consider the Repository to be in violation of this Memorandum if it executes the above procedure in good faith.

## **SPECIAL CONCERNS**

In addition to considering the scientific merit of authorizing a proposed analysis, the BLM will consider other special concerns that may, or may not, apply to the Repository. This may affect the BLM's decision on whether to authorize or not authorize consumptive analysis. These special concerns include:

Analysis prohibited by law or policy: Analysis will not be authorized if doing so will violate Federal law or BLM policy. Because authorizing consumptive analysis by the BLM is discretionary, the BLM authorized official may also consider State and local laws, and Repository policy prior to authorizing consumptive analysis.

Objects or Collections involved in a Law Enforcement Action: Collections (or any portions thereof) that are involved in a Law Enforcement action, or civil or criminal proceeding may be impounded or quarantined as evidence. The BLM, in conjunction with Federal investigators, will determine if it is appropriate to authorize consumptive analysis. In some cases consumptive analysis will be an integral part of the proceedings, and will therefore be authorized. In other cases, a judge's order may either prohibit or require certain conditions of consumptive analysis.

Past performance: The credentials and past performance of the person, or persons, doing the analysis will be considered as part of assessing the merit of the consumptive analysis request.

Duplication of effort: The Repository and the BLM should consider whether performing the proposed analysis is duplicating previous work, in which case existing results should be shared and consulted, or whether the analysis constitutes a legitimate attempt to attain reproducible results, as a basic tenet of science.

### APPENDIX 3 REPRODUCING BLM OWNED MUSEUM PROPERTY

There are many instances where reproducing BLM owned museum property will be beneficial to the BLM, the Repository, and the American public. Benefits include:

- Maintaining photo and 3-dimensional replicas that may serve as a proxy in case an original object is lost, damaged, or destroyed
- Serve as a facsimile for research or educational comparison, allowing the original to remain in the care of the Repository
- Facilitate education and interpretation by offering durable (or consumable) replicas that may be handled outside of a curation environment
- Distribution and trade of replicas with other repositories, museums, and educational institutions
- Sale of replicas that further the educational mandates of both the BLM and Repository without negatively impacting the original resource

In all cases, the production of replicas should enhance the visibility of BLM-owned and Repository-controlled resources.

#### AUTHORIZING REPRODUCTIONS AND REPLICAS

Reproductions of BLM-owned museum property must be approved by the BLM. Unless considered routine (see below), all actions that seek to reproduce BLM-owned museum property must receive approval in writing from the BLM prior to being made or commissioned.

All requests to reproduce BLM-owned museum property should originate from the Repository on behalf of the person or entity that is proposing to reproduce the object(s). The Repository should provide a recommendation as to the merits of the proposed project. The request should include the following information:

- Specimens to be reproduced, including catalog numbers
- Description of the methods that will be used
- Discussion on the risks to the original object(s) and what safeguards will be in place to preserve the original
- How making the reproduction will benefit both the BLM, the Repository, and the American public and how the potential gain outweighs the potential to damage the object
- How the reproductions will be used and where they will finally end up

In addition, it is advisable to have written concurrence from a knowledgeable Repository official (i.e. the assigned curator) that the proposed procedure is appropriate and follows current protocols for reproduction.

In all cases, the BLM official will make the determination on the terms of making authorized reproductions. Disputes between the Repository and the person or entity proposing to make the

reproduction should be settled prior to contacting the BLM. However, in cases where the two Parties are unable to agree on the details of a specific request to produce a reproduction, the BLM official will determine whether to authorize the procedure after considering both the merits of the proposed analysis and the responsibilities of the Repository, including the obligations set forth in this Memorandum.

## TERMS AND CONDITIONS

Production of reproductions, including routine reproductions (see below), that are authorized by the BLM will have the following terms and conditions:

- The replication process will result in minimal damage
- The primary purpose of the replication is for curation, research, education, or public outreach
- Both the BLM and the Repository shall be acknowledged whenever the replica is displayed or transferred, and in all resultant reports and publications
- If molds and casts are made, a first generation cast will be provided to the BLM at no cost that will remain with the original object for research purposes
- All terms and conditions of the active Memorandum continue to apply
- The BLM may append additional terms and conditions as necessary to preserve the integrity of museum property
- The Repository may append additional terms and conditions as necessary to preserve the integrity of museum property

Special conditions: Any proposal to produce a replica that would violate one or more of the above listed terms and conditions will be considered by the BLM official and may be authorized, at the discretion of the BLM, on a case-by-case basis.

Ownership of molds: The Repository will retain control of all molds unless otherwise arranged in advance by the BLM official.

BLM-initiated replicas: Occasionally the BLM may request a reproduction, in addition to a first-generation replica when the process is initiated by the Repository. In these cases the BLM is responsible for the additional work that must be done, including the production of additional replicas or any special requests such as crafting missing parts or elements, mounting armatures, exhibit production, or painting.

Commercial reproductions: Reproductions for commercial profit will be considered when it can be shown that the benefit to the BLM, Repository, and American public is great in terms of educational interpretation and outreach and negligible-to-nonexistent in terms of loss of intellectual property or the value to the original museum property. In all cases, the BLM official will determine if it is appropriate to allow the production or sale of commercially reproduced BLM-owned museum property, including those produced and/or sold by the Repository. In addition to adhering to all of the above terms and conditions, authorization will also require that

both the BLM and the Repository are acknowledged in the documentation and signage with each replica.

## ROUTINE REPRODUCTIONS

The production of routine reproductions that have minimal impact on the original objects and are done in furtherance of basic curation, scientific analysis, or educational outreach will be authorized without requiring prior notification or authorization from the BLM. However, all above-listed terms and conditions continue to apply. Routine reproductions include:

- Photography, sketches, and non-invasive techniques when they are performed in order to document museum property
- Simple molding and casting of fossils (one-part half-casts only)
- Reproductions required in order to document or support preparation or conservation needs
- Routine research or educational reproductions that have been specifically authorized by the BLM
- X-ray, CT, or other imaging techniques that would result in no impact to the original specimen

## SPECIAL CONCERNS

When considering whether to authorize a request to reproduce BLM owned museum property the BLM will consider other special concerns that may, or may not, apply to the Repository. This may affect the BLM's decision on whether to authorize or not authorize a request for reproduction. These special concerns include:

Reproduction prohibited by law or policy: Reproductions, including photography, will not be authorized if doing so will violate Federal law or BLM policy.

Objects or Collections involved in a Law Enforcement Action: Collections (or any portions thereof) that are involved in a Law Enforcement action, or civil or criminal proceeding may be impounded or quarantined as evidence. The BLM, in conjunction with Federal investigators, will determine if it is appropriate to consider reproducing (or photographing) these objects.

Past performance: The credentials and past performance of the person, or persons, producing the reproduction(s) will be considered as part of authorizing a request to produce reproductions.

Previous reproductions: The Repository and the BLM should consider whether producing a reproduction will endanger the original object by subjecting it to a repeated application of the reproduction process. When possible, an existing reproduction should be used to develop a second-generation set of reproductions.

## APPENDIX 4 REPOSITORY ASSESSMENT

Append the latest repository assessment (i.e. 411 DM checklist) and the resultant BLM response, if any

## APPENDIX 5 REPOSITORY SCOPE OF COLLECTIONS STATEMENT

Append the latest signed and dated copy of the repository scope of collections statement (SOCS)

## APPENDIX 6 REPOSITORY POLICIES AND DOCUMENTS

List documents here. Consider including the following:

- Collections management plan/policy
- Access policy
- Ethics policy
- Deaccession policy
- Transfer/disposal policy
- Blank accession receiving form
- Blank loan forms
- Other policy documents

Append copies of the documents below



## **Memorandum of Understanding FWP NO. 25-0001**

### **Montana Fish, Wildlife & Parks – Carter County Museum and Medicine Rocks State Park Working Agreement**

This Memorandum of Understanding (MOU) FWP No. 25-0001 between the Montana Department of Fish, Wildlife & Parks (State or FWP) P.O. Box 200701, Helena, MT 59620-0701 and the Carter County Museum (Museum) 306 N Main Street, Ekalaka, MT 59324 sets forth the agreed upon conditions, understandings, procedures, and responsibilities for each party.

The MOU's initial term is upon final signatures, through December 31, 2030, unless terminated earlier as provided in this MOU. In no event is this MOU binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the MOU and the procurement officer signature approving the form of the MOU do not constitute an authorized signature.

**MOU Renewal.** State may renew this MOU under its then-existing terms and conditions (subject to potential cost adjustments described below) in one-year intervals, or any interval that is advantageous to State. This MOU, including any renewals, may not exceed a total of seven (7) years.

**Cost Adjustments Negotiated Based on Changes in Museum's Costs.** After the MOU's initial term and if State agrees to a renewal, the parties may negotiate cost adjustments at the time of MOU renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Museum's costs. State is not obligated to agree upon a renewal or a cost increase.

#### **Purpose:**

The purpose of this MOU is to:

1. formally recognize the Museum as the repository for Medicine Rocks State Park.
2. identify the Museum as an agent of limited authority working with FWP for the recovery, preparation, and curation of FWP paleontological and archaeological resources and education of the public;
3. identify the Museum and its professional staff as having monitoring capabilities for Medicine Rocks State Park;
4. outline procedures to be followed pertaining to FWP paleontological and archaeological resources; and

5. authorize an arbitrary but defined level of ground disturbance through scientific excavation as agreed upon by FWP and the Museum each year.

Museum will be responsible for the following:

#### PERMITTING

- 1) It is the responsibility of the Museum to obtain permission and appropriate permits to access all FWP lands prior to conducting paleontological or archaeological inventory, excavation, or collection work. This MOU does not grant such permission.
- 2) All paleontologic and archaeological materials removed from FWP land under the terms of this MOU remain FWP property until decided otherwise by FWP.
- 3) Prior to commencing paleontologic or archaeological inventory, assessment, or collection work on FWP land during a current year, the Museum's liaison, or his or her designee, shall contact the FWP Heritage Program staff ("Heritage Program") to discuss proposed activities and to determine if any restrictions have been placed on FWP land where Museum staff intend to work. The Heritage Program will contact the appropriate FWP manager to verify that access or other management concerns are not applicable. Once approved by the Heritage Program, the Museum will contact the appropriate FWP manager to inform them of proposed dates of work and the kinds of activities planned.

#### DATA RECOVERY AND DOCUMENTATION

All paleontological and archaeological inventory, collection, or excavation work conducted on FWP land will follow acceptable professional standards. All collected/received FWP paleontological and archaeological materials (or associated items) will be cataloged with Museum numbers. All such work must be followed with a technical report that, at a minimum, provides:

- 1) the field methods used to investigate the subject paleontologic or archaeological site;
- 2) the geology containing the recovered paleontologic or archaeological materials;
- 3) the amount of sediments (in square meters) excavated per collection site;
- 4) the kinds and quantities of specimens recovered from FWP lands;
- 5) specimen identification numbers;
- 6) common and scientific fossil names and elements (may be amended at a later date if the name/element of a specimen is not initially identifiable);
- 7) provenience of each specimen within its respective excavation unit (if applicable);
- 8) location of each collection site plotted on a 1:24,000 scale USGS topographic map with the map name, publication date, and township designation clearly indicated. State Historic Preservation Office ("SHPO") paleontological & archaeological site forms will be filled out and submitted to the SHPO where they will be given Smithsonian site numbers and entered into the state-wide data base; and

9) when such work occurs at Medicine Rocks State Park, the technical report shall also include recommendations for public education programs about paleontological and archaeological resources specific to Medicine Rocks State Park and advise park staff about how best to accomplish the recommended public education.

10) Report and catalog sheets will be submitted to the Heritage Program by March 15th of each year. In addition, one copy of all published articles, theses, or reports concerning FWP lands paleontology and archaeology, must be sent to the Heritage Program when available.

#### CURATORIAL REQUIREMENTS

The Museum agrees to provide a facility capable of storing FWP paleontological and archaeological resources (the "Collection"). The Museum agrees:

- 1) To the best of its ability, operate a facility that will maintain a temperature and humidity controlled, dry, leak proof, and rodent and insect proof environment;
- 2) Curated paleontological and archaeological materials must not be stored or displayed in direct sunlight;
- 3) Facility must demonstrate the ability to control staff or visitor access to paleontological and archaeological materials;
- 4) Facility must have highly secure windows that meet professional curation standards;
- 5) Facility must have modern security doors on solid frames (both external and internal) with functioning keyed locks or electronic keyed devices;
- 6) Facility must have functioning electronic burglar and fire alarm systems that can be monitored from a local law enforcement office or a licensed security company acceptable to FWP;
- 7) Facility must be staffed with a full-time curatorial position with an advanced degree in geology, Earth Sciences, biology, museum studies, public history, or related fields, and has relevant experience in the collection, study, and curation of vertebrate paleontology and archaeology.
- 8) Facility must demonstrate the ability for secure and professional records keeping. Specimens or material which is deemed by the Museum to have no research value, but which may be suitable for educational purposes may be transferred to an educational/teaching collection at which point it will not be tracked by the Museum. A list of such material will be noted in a year-end report to the Heritage Program.
- 9) Publications by Museum researchers which mention FWP specimens will be noted in a year-end report to FWP. Images of FWP specimens are permitted to be shared for non-commercial purposes including collaboration with colleagues and researchers. The transfer or sharing of CT, photogrammetric, and other 3-dimensional data, as well as the publication of such data in scientific publications, does not require additional permissions from FWP, but such activities will be noted in a year-end report to FWP. Consumptive analyses, including but not limited to histological and isotopic sampling and analyses require prior permission from FWP. When feasible, a cast of the removed segment will

be created to retain morphological information (this is not necessary when the sampled material is fragmentary (e.g., eggshell shards, small bone fragments) or extremely common in the Museum collection (e.g., gar scales, common teeth). Further, when feasible, the Museum is permitted to create molds and casts of FWP specimens for research, education, and exhibit purposes. The preparation and research conducted on/with FWP specimens will be noted in a year-end report to FWP (example: "CCM 2924 Triceratops squamosal histologically sampled for XXX dissertation research project. Cast of removed segment created and retained"). If any damage to the FWP specimens occurs, the Museum must immediately notify FWP liaison of the damage and note it in a yearly report. The yearly report should include relevant information about subsequent repairs or disposal of fragments; and

10) Facility must demonstrate an expected steady and reliable source of state, federal, or private funding (specific to the repository) for at least 10 years following its acceptance as a repository.

When the Museum wishes to no longer store FWP paleontological & archaeological materials, those materials must be delivered, at the Museum's expense, to another repository that is acceptable to FWP.

#### MONITORING REQUIREMENTS

FWP will consult with Museum on compliance projects at Medicine Rocks State Park. This may include requests for report review or project monitoring. Comments on report review will be returned to FWP in a timely manner. When Museum provides project monitoring services at Medicine Rocks State Park the monitoring will be performed by Museum staff. Archaeological monitoring will be done by a person meeting or exceeding the Secretary of the Interior's Qualification Standards for Archaeology or with equivalent experience. Paleontological monitoring must be performed by person with an advanced degree in paleontology or closely aligned field with previous compliance experience.

#### FEES & DISPOSITION

No one may profit from the collection or sale of reproduced cultural or paleontological materials from FWP land without due compensation to FWP. All paleontological and archaeological materials, collected per the terms of this MOU, are the permanent property of the State of Montana. FWP fossils will not be sold under any circumstances. Fees collected from licenses, loans, and sale of reproduced FWP cultural, or paleontological materials will be directed to the FWP property from which the resources were removed, after deduction of any actual costs incurred by the Museum. When the Museum proposes to sell images, casts, or other replicas of a FWP fossil or archaeological artifact, FWP and the Museum will discuss each proposal on a case-by-case basis and attempt to reach an agreement for compensation to FWP. In the case of archaeological or culturally sensitive materials, the Museum will consult with FWP and Tribal Historic Preservation Offices (THPO) on a case-by-case basis.

#### LOANS OF FWP PALEONTOLOGIC & ARCHAEOLOGIC MATERIALS

FWP paleontologic or archaeologic materials may be loaned to qualified institutions or entities (including museums, universities, Tribal Governments, or the institutions represented by artists and exhibitors) and active loans will be noted in a year-end report to FWP. The Museum will subsequently inform FWP of the return of loaned fossils and archaeological material in the year-end report.

FWP will be responsible for the following:

- A. Provide Museum with FWP regulations for curation of paleontological and archaeological resources (Attachment B).
- B. Recognize Museum as an "approved repository" (see Attachment B) and accept the professional practices and standards for paleontological and archaeological collections detailed in the Carter County Museum Collections Management Policy (Attachment C) as in accordance with applicable federal property regulations regarding museum collections.
- C. Maintain consistent communication with Museum regarding the Collection through agency liaisons, and update or renew the MOU as necessary. Periodically, FWP may request to physically inspect the Collection including contextual data records.
- D. Review and approve or deny requests from Museum for permanent transfer or deaccession of the Collection, or part thereof.
- E. Acknowledge that Museum may enter into separate agreements or contracts with individuals and organizations authorized by the FWP, through permit, to collect paleontological and archaeological resources from Medicine Rocks State Park and deliver such specimens to Museum for curation.
- F. Maintain a firm commitment to identify and promote opportunities for shared support and services, for field collection and conservation of paleontological resources from Medicine Rocks State Park, and fossils already housed within the Collection.
- G. Recognize Museum policy for Selective Acquisition and allow Museum sole discretion to determine what paleontological resources will be accepted as part of the Collection.

#### **LIAISONS AND SERVICE OF NOTICES**

**Memorandum of Understanding Liaisons.** All project management and coordination on FWP's behalf must be through a single point of contact designated as FWP's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this MOU must be coordinated between FWP's liaison and Contractor's liaison.

Brenna Moloney is FWP's liaison  
2300 Lake Elmo Drive  
Billings, MT 59105  
406.594.4322  
[brenna.moloney@mt.gov](mailto:brenna.moloney@mt.gov)

Dr. Sabre Moore is Museum's liaison  
PO Box 445  
Ekalaka, MT 59324  
406.775.6886  
[smoore@cartercountymuseum.org](mailto:smoore@cartercountymuseum.org)

**Termination for Convenience.** State may, by written notice to Museum, terminate this MOU without cause and without incurring liability to Museum. State shall give notice of termination to Contractor at least **thirty (30)** days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Museum up to the date State's termination takes effect. This is Museum's sole remedy. State shall not be liable to Museum for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

### **Liabilities.**

To the extent authorized by the laws of the State of Montana, Contractor shall indemnify and hold FWP, its agents, and employees harmless from and against any and all claims, demands, or actions for damages to property or injury or death to persons or other damages to persons or entities arising out of or resulting from the performance of this MOU, or the results of this MOU.

FWP shall indemnify and hold Contractor, its agents, and employees harmless against any and all claims, demands, or actions for damages that directly or indirectly result from any negligent act or omission of FWP, its agents, or employees, pertaining to its activities and obligations under this MOU.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of MOU execution in order to facilitate State electronic funds transfer payments. Montana Fish, Wildlife & Parks will compensate the Contractor for services conducted pursuant to this MOU. Invoices are to be submitted within 10 business days after delivery.

Museum's liaison agrees to contact FWP in advance of exceeding this agreed upon budget. Any costs incurred beyond this amount will be the responsibility of the Contractor without such notification. Upon notification of an anticipated over run FWP will work with the Contractor to meet the increased budget need.

### **CONFORMANCE WITH MEMORANDUM OF UNDERSTANDING**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the MOU shall be granted without Fish, Wildlife & Parks prior written consent. Product or services provided that do not conform to the MOU terms, conditions, and specifications may be rejected and returned at Museum's expense.

**Invoices must be promptly submitted to FWP (within 10 working days). Funding is allocated to FWP on a fiscal year basis, and prior year funding may not be available if invoices are submitted late by the Contractor.**

The parties through their authorized agents have executed this MOU on the dates set out below.

**STATE OF MONTANA**

Montana Fish, Wildlife & Parks  
PO Box 200701  
Helena, MT 59620-0701

**MUSEUM**

Carter County Museum  
PO Box 445, Ekalaka MT 59324  
FEDERAL ID # 81-6012684

BY: Christy Clark, Director  
(Name/Title)

BY: Sabre Moore, Executive Director  
(Name/Title)

Christy Clark  
(Signature)

Sabre Moore  
(Signature)

DATE: 1/31/25

DATE: 01/27/2025

Approved as to Legal Content:

\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form:

\_\_\_\_\_  
Procurement Officer (Date)  
Montana Fish, Wildlife & Parks

FS Agreement No. 25-CS-11132428-002

Cooperator Agreement No. \_\_\_\_\_

**MASTER  
CHALLENGE COST SHARE AGREEMENT  
Between The  
CARTER COUNTY GEOLOGICAL SOCIETY  
And The  
USDA, FOREST SERVICE  
NATIONAL FOREST SYSTEM LANDS**

This MASTER CHALLENGE COST SHARE AGREEMENT is hereby made and entered into by and between the Carter County Geological Society, hereinafter referred to as “Carter County Museum,” and the United States Department of Agriculture (USDA), Forest Service, National Forest System Lands hereinafter referred to as the “U.S. Forest Service,” under the authority: Department of Interior and Related Agencies Appropriation Act of 1992, P.L. 102-154.

Background: Carter County Museum and U.S. Forest Service have a standing history of cooperation in preserving paleontological resources (fossils) from National Forest System (NFS) lands. Carter County Museum provides both field and laboratory stewardship for fossils from the Custer-Gallatin National Forest. Field efforts and collections involve dominantly Cretaceous and Pleistocene age vertebrate fossils. The field and collections management efforts of Carter County Museum may ultimately include paleontological resources from more than one Forest Service region, and thus this agreement is enacted at the National level and applicable to all National Forest System lands.

Title: Long Term Curation of Paleontological Resources from National Forest System Lands

## **I. PURPOSE**

The purpose of this agreement is to document the cooperation between the parties to support field collection and curation of paleontological resources from NFS lands, and make curated specimens accessible for scientific and educational purposes, in accordance with Attachments A (Paleontological Resource Preservation Act, 2009), B (Code of Federal Regulations subpart 291), and C (Carter County Museum Collections Management Policy) in accordance with the following provisions and any incorporated Supplemental Project Agreement(s).

## **II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:**

It is mutually beneficial to enter into this agreement to establish a framework for the development of individual Supplemental Project Agreements (SPAs) for the parties to work together on projects to accomplish their mutual goals.



The Parties share a common interest to preserve for public use objects of national significance, including significant paleontological resources, for the inspiration and benefit of the people of the United States. The Parties recognize that federal law (PRPA) calls for the preservation of paleontological resources collected from NFS lands in an approved repository for scientific and educational use. As outlined in the law, such arrangements “*Shall emphasize interagency coordination and collaborative efforts where possible with non-Federal partners, the scientific community, and the public.*” Supporting language for this agreement states that “*The Secretary may enter into agreement with nonfederal repositories regarding the curation of these resources, data, and records*”. More specific federal requirements for curation of paleontological resources can be found at 36 CFR § 291.21 - 291.26 (Attachment B).

The U.S. Forest Service is dedicated to the preservation of paleontological resources using scientific principles and expertise. The Forest Service recognizes paleontological resources as nonrenewable, and an accessible and irreplaceable part of America’s natural heritage. The Forest Service must ensure that paleontological specimens and associated records collected from NFS lands, herein called *the Collection*, are curated with professional archival standards for long-term preservation.

The Carter County Museum was established in 1936 by the Carter County Geological Society to collect, preserve and catalog artifacts and specimens of historical and scientific significance. CCM holds the significant distinction of being the first county museum in Montana and the first to display dinosaur fossils in Montana. Fossil collections of Carter County Museum cover a 100-million-year history of the region, including Cretaceous marine reptiles, dinosaurs, and Ice Age mammals. Carter County Museum is an approved repository of the Forest Service, with requisite professional staff, archival standards, and infrastructure to provide long-term curatorial services for paleontological collections. Carter County Museum is desirous of housing and maintaining paleontological resources from NFS lands in perpetuity, and making them available for scientific research, exhibition, and educational purposes.

In consideration of the above premises, the parties agree as follows:

### **III. CARTER COUNTY MUSEUM SHALL:**

- A. LEGAL AUTHORITY. Carter County Museum shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.
- B. Provide for the proper storage, handling and use of paleontological resources from NFS lands using scientific principles and expertise, as detailed in USDA regulations (36 CFR § 291.21 291.26, Attachment B) and Carter County Museum Collections Management Policy (Attachment C).
- C. Provide the U.S. Forest Service access to and the right to examine all contextual



- information (digital or hardcopy of records, books, papers, photographs) relating to the Collection, including a listing (updated as necessary) that identifies all paleontological resources from NFS lands housed by Carter County Museum.
- D. Request approval from the U.S. Forest Service for any activity that will involve permanent transfer or loss of the Collection (or part), including deaccession or consumptive analysis (destructive sampling).
  - E. Report to the U.S. Forest Service all instances of and circumstances surrounding loss of, or deterioration/damage to, the Collection.
  - F. Review and approve or deny requests for short-term loan of specimens from the Collection, or access to the Collection for scientific, education or exhibition purposes in accordance with Carter County Museum collection policies (Attachment C).
  - G. Ensure that all exhibits, photographs, or publications of the Collection by Carter County Museum staff shall credit “USDA Forest Service”.
  - H. Collection, or access to the Collection for scientific, education or exhibition purposes in accordance with Carter County Museum collection policies (Attachment C).
  - I. Not in any way use or employ the Collection for purposes other than scientific research and public education.
  - J. Agree to maintain the confidentiality of precise paleontological locality data for sensitive locations on NFS lands, in accordance CFR § 291.6 (Attachment B). Nonsensitive collections data, exclusive of precise locality information for fossil producing sites/localities, may be shared freely through online digital services to maximize public accessibility to scientific information.

#### **IV. THE U.S. FOREST SERVICE SHALL:**

- A. Provide Carter County Museum with USDA regulations for curation of paleontological resources (CFR § 291.21 291.26, Attachment B).
- B. Recognize Carter County Museum as an “approved repository” (see Attachment B) and accept the professional practices and standards for paleontological collections detailed in the Carter County Museum Collections Management Policy (Attachment C) as in accordance with applicable federal property regulations regarding museum collections.
- C. Maintain consistent communication with Carter County Museum regarding the Collection through agency contacts (named below), and update or renew the agreement as necessary. Periodically, an agency contact may request to physically inspect the Collection including contextual data records.



- D. Review and approve or deny requests from Carter County Museum for permanent transfer or deaccession of the Collection, or part thereof.
- E. Allow Carter County Museum to create replicas of the Collection, either through physical or digital means, for scientific and educational purposes, in keeping with the adopted policy and practice of Carter County Museum regulating such uses. Fossil replicas (molds, casts, digital data) created from federal specimens are not federal property. Fossil specimens from NFS lands may not be replicated expressly for commercial purposes, as prohibited by some aspects of the PRPA and associated regulations - "*All proceeds derived from any use of the collection will be used for their support*" (36 CFR § 291.26 (b) (9)).
- F. Acknowledge that Carter County Museum may enter into separate agreements or contracts with individuals and organizations authorized by the USDA Forest Service, through permit, to collect paleontological resources from NFS lands, and deliver such specimens to Carter County Museum for curation.
- G. Maintain a firm commitment to identify and promote opportunities for shared support and services, for field collection and conservation of paleontological resources from NFS lands, and fossils already housed within the Collection.
- H. Recognize Carter County Museum policy for Selective Acquisition and allow Carter County Museum sole discretion to determine what paleontological resources will be accepted as part of the Collection.

**V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:**

- A. The Federal Government retains continued ownership (title) and control over paleontological resources (the Collection) from NFS lands. Subsequent additions to the Collection will be recorded undersigned forms of transference containing reference to this agreement. The Collection may not be permanently transferred or disposed of without written permission of the U.S. Forest Service.
- B. Qualified individuals (permittee) holding a Forest Service Research and Collection Permit (form FS-2800-22B) and having signed approval from Carter County Museum to list their repository for collections, must ensure that paleontological resources collected under the permit are transferred to Carter County Museum for accession into the Collection prior to expiration of permit. If the collector (permittee) wishes to retain a specimen for conservation or research purposes, Carter County Museum must formally accession the specimen, and issue a loan back to the permittee in accordance with Carter County Museum Collections Management Policy (Attachment C).
- C. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

**Principal Cooperator Contacts:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Dr. Nathan Carroll Curator of Paleontology, Carter County Museum 306 N Main Street Ekalaka, MT 59324 Telephone: 406 775-6886 Email: <a href="mailto:ncarroll@cartercountymuseum.org">ncarroll@cartercountymuseum.org</a>	Dr. Sabre Moore Executive Director, Carter County Museum 306 N Main Street Ekalaka, MT 59324 Telephone: 406 775-6886 Email: <a href="mailto:smoore@cartercountymuseum.org">smoore@cartercountymuseum.org</a>

**Principal U.S. Forest Service Contacts:**

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Bruce Schumacher and Justin Wilkins 1617 Cole Boulevard, Building 17 Lakewood, CO 80401 Telephone: 720-618-9961; 303-842-0028 Email: <a href="mailto:bruce.schumacher@usda.gov">bruce.schumacher@usda.gov</a> <a href="mailto:william.wilkins@usda.gov">william.wilkins@usda.gov</a>	Brandon Clifford 4 Farm Colony Rd. Warren, PA 16365 Telephone: 505-331-5407 Email: <a href="mailto:brandon.clifford@usda.gov">brandon.clifford@usda.gov</a>

- D. **ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE ENTITIES.** This agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 as continued by Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113-6, Division F, Title I, Section 1101(a)(3) regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement Carter County Museum acknowledges that it: 1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If Carter County Museum fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds Carter County Museum has expended in violation of sections 433 and 434.
- E. **AVAILABILITY FOR CONSULTATION.** Both parties agree to be available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.



- F. SUPPLEMENTAL PROJECT AGREEMENTS (SPA). Nothing in this agreement obligates either party to offer or accept any project proposals under this agreement. Any projects added to this agreement must be by mutual consent of the parties through a specific SPA.
- G. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Carter County Museum are sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the agreement.

To Carter County Museum, at Carter County Museum's address shown in the agreement or such other address designated within the agreement.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- H. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or Carter County Museum from participating in similar activities with other public or private agencies, organizations, and individuals.
- I. ENDORSEMENT. Any of Carter County Museum's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of Carter County Museum's products or activities.
- J. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANTS. Carter County Museum agree(s) that any of Carter County Museum's employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as Carter County Museum has hereby willingly agreed to assume these responsibilities.

Further, Carter County Museum shall provide any necessary training to Carter County Museum's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. Carter County Museum shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.

- K. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.



- L. **NONDISCRIMINATION**. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.
- M. **ELIGIBLE WORKERS**. Carter County Museum shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Carter County Museum shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or SPA awarded under this agreement.
- N. **STANDARDS FOR FINANCIAL MANAGEMENT**.

### **1. Financial Reporting**

Carter County Museum shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

### **2. Accounting Records**

Carter County Museum shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

### **3. Internal Control**

Carter County Museum shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. Carter County Museum shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement and used solely for authorized purposes.

### **4. Source Documentation**



Carter County Museum shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant/contract documents. These documents must be made available to the U.S. Forest Service upon request.

- O. INDIRECT COST RATES- PARTNERSHIP. Indirect costs are approved for reimbursement or as a cost-share requirement and have an effective period applicable to the term of this agreement.
1. If the Cooperator has never received or does not currently have a negotiated indirect cost rate, they are eligible for a de minimis indirect cost rate up to 15 percent of modified total direct costs (MTDC). MTDC is defined as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award).
  2. For rates greater than 15 percent and less than 25 percent, the Cooperator shall maintain documentation to support the rate. Documentation may include, but is not limited to, accounting records, audit results, cost allocation plan, letter of indirect cost rate approval from an independent accounting firm, or other Federal agency approved rate notice applicable to agreements.
  3. For a rate greater than 25 percent, the U.S. Forest Service may require that the Cooperator request a federally approved rate from 's cognizant audit agency no later than 3 months after the effective date of the agreement. will be reimbursed for indirect costs or allowed to cost-share at the rate reflected in the agreement until the rate is formalized in the negotiated indirect cost rate (NICRA) at which time, reimbursements for prior indirect costs or cost-sharing may be subject to adjustment.
  4. Failure to provide adequate documentation supporting the indirect cost rate, if requested, could result in disallowed costs and repayment to the U.S. Forest Service.
- P. OVERPAYMENT. Any funds paid to Carter County Museum in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the Federal Government. The following must also be considered as a debt or debts owed by Carter County Museum to the U.S. Forest Service:

- Any interest or other investment income earned on advances of agreement funds; or
- Any royalties or other special classes of program income which, under the provisions of the agreement, are required to be returned;

If this debt is not paid according to the terms of the bill for collection issued for the overpayment, the U.S. Forest Service may reduce the debt by:



1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to Carter County Museum.
3. Taking other action permitted by statute (31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B).

Except as otherwise provided by law, the U.S. Forest Service may charge interest on an overdue debt.

- Q. AGREEMENT CLOSEOUT. Within 120 days after expiration or notice of termination the parties shall close out the award/agreement.

Any unobligated balance of cash advanced to Carter County Museum must be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 2 CFR Part 200, Subpart D, 200.305.

Within a maximum of 120 days following the date of expiration or termination of this agreement, all financial performance and related reports required by the terms of the agreement must be submitted to the U.S. Forest Service by Carter County Museum.

If this agreement is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- R. PROGRAM MONITORING AND PROGRAM PERFORMANCE REPORTS. The parties to this agreement shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

Performance reports must contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Wherever the output of the project can be readily expressed in numbers, a computation of the cost per unit of output, if applicable.
- Reason(s) for delay if established goals were not met.
- Additional pertinent information.

Carter County Museum shall submit annual performance reports to the U.S. Forest Service Program Manager. These reports are due 90 days after the reporting period. The final performance report must be submitted either with Carter County Museum's final payment request, or separately, but not later than 120 days from the expiration date of the agreement.

- S. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. Carter County Museum shall retain all records pertinent to this agreement for a period of no less than 3 years from the expiration or termination date. As used in this provision,



“records” includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. Carter County Museum shall provide access and the right to examine all records related to this agreement to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative. The rights of access in this must not be limited to the required retention period but must last as long as the records are kept.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with Federal funds must be retained for 3 years after its final disposition.

- T. FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 215.36.

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

- U. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, “Federal Leadership on Reducing Text Messaging While Driving,” any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperators, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- V. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. Carter County Museum is/are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"Paleontology Program of the U.S. Forest Service, Department of Agriculture"

Carter County Museum may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. Carter County Museum is/are requested to provide copies of notices or announcements to the U.S. Forest Service



Program Manager and to U.S. Forest Service's Office of Communications as far in advance of release as possible.

- W. PURCHASE OF EQUIPMENT. U.S. Forest Service funds may be used by Carter County Museum to purchase equipment necessary to accomplish activities described in this agreement. The available funding is displayed in the financial plan. Title to the equipment rests with the U.S. Forest Service, but may be transferred to Carter County Museum on completion of the project, if appropriate.
- X. GOVERNMENT-FURNISHED PROPERTY. Carter County Museum may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. Carter County Museum shall not modify, cannibalize, or make alterations to U.S. Forest Service property. A separate document, Form AD-107, must be completed to document the loan of U.S. Forest Service property. The U.S. Forest Service shall retain title to all U.S. Forest Service-furnished property. Title to U.S. Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the U.S. Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.

*Cooperator Liability for Government Property.*

1. Unless otherwise provided for in the agreement, Carter County Museum shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies:
  - a. The risk is covered by insurance or Carter County Museum is/are otherwise reimbursed (to the extent of such insurance or reimbursement).
  - b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of Carter County Museum's managerial personnel. Carter County Museum's managerial personnel, in this clause, means Carter County Museum's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of Carter County Museum's business; all or substantially all of Carter County Museum's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. Carter County Museum shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. Carter County Museum shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
3. Carter County Museum shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.



4. Upon the request of the Grants Management Specialist, Carter County Museum shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of agreements of assignment in favor of the Government in obtaining recovery.

Y. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. Carter County Museum shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this agreement.

Z. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. Carter County Museum shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

***"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)"***

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington DC 20250-9410 or call toll free voice (866) 632-9992, TDD (800)877-8339, or voice relay (866) 377-8642. USDA is an equal opportunity provider and employer."

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

***"This institution is an equal opportunity provider."***

AA. REMEDIES FOR COMPLIANCE RELATED ISSUES. If Carter County Museum materially fail(s) to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, or the agreement, the U.S. Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by Carter County Museum or more severe enforcement action by the U.S. Forest Service;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current agreement for the Carter County Museum's program;
4. Withhold further awards for the program, or



5. Take other remedies that may be legally available, including debarment procedures under 2 CFR Part 417.

BB. TERMINATION BY MUTUAL AGREEMENT. This agreement may be terminated, in whole or part, as follows:

1. When the U.S. Forest Service and Carter County Museum agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
2. By 30 days written notification by Carter County Museum to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the U.S. Forest Service decides that the remaining portion of the award/agreement does not accomplish the purpose for which the award/agreement was made, the U.S. Forest Service may terminate the award upon 30 days written notice in its entirety.

Upon termination of an agreement, Carter County Museum shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to the Carter County Museum for the U.S. Forest Service share of obligations that cannot be cancelled and were properly incurred by the Carter County Museum up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

CC. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

DD. DEBARMENT AND SUSPENSION. Carter County Museum shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should Carter County Museum or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

EE. PROHIBITION AGAINST INTERNAL CONFIDENTIAL AGREEMENTS. All non federal government entities working on this agreement will adhere to the below provisions found in the Consolidated Appropriations Act, 2016, Pub. L. 114-113, relating to reporting fraud, waste and abuse to authorities:



- (a) The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (b) The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.
- (c) The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (d) If the Government determines that the recipient is not in compliance with this award provision, it:
  - (1) Will prohibit the recipient's use of funds under this award, in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and
  - (2) May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

FF. COPYRIGHTING. Carter County Museum is/are granted sole and exclusive right to copyright any publications developed as a result of this agreement. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this agreement.

No original text or graphics produced and submitted by the U.S. Forest Service shall be copyrighted. The U.S. Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for federal government purposes. This right must be transferred to any sub-agreements or subcontracts.

This provision includes:

- The copyright in any work developed by Carter County Museum under this agreement.
- Any right of copyright to which Carter County Museum purchase(s) ownership with any federal contributions.



- GG. PUBLICATION SALE. Carter County Museum may sell any publication developed as a result of this agreement. The publication may be sold at fair market value, which is initially defined in this agreement to cover the costs of development, production, marketing, and distribution. After the costs of development and production have been recovered, fair market value is defined in this agreement to cover the costs of marketing, printing, and distribution only. Fair market value must exclude any in-kind or federal government contributions from the total costs of the project.
- HH. MODIFICATIONS. Modifications within the scope of this award/agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.
- II. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through October 15, 2029 at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.
- JJ. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this agreement. In witness whereof, the parties hereto have executed this agreement as of the last date written below.

---

SABRE MOORE, Executive Director  
Carter County Geological Society

---

Date

---

ELRAND DENSON, Director  
U.S. Forest Service, Lands, Minerals and Geology

---

Date



The authority and format of this agreement have been reviewed and approved for signature.

---

COURTNEY MESSINA  
U.S. Forest Service Grants Management Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

## APPENDIX H: RESOLUTION

183609 Fee: \$0.00 Bk 140-MIS Pg 81

CARTER COUNTY Recorded 5/30/2025 At 1:45 PM

Judy Wright, Clk & Rcdr By *Dana Schulman*  
Return to: FILED-CARTER COUNTY

### RESOLUTION 05302025-04

#### BOARD OF COUNTY COMMISSIONERS

#### CARTER COUNTY, MONTANA

Resolution of the Board of County Commissioners, Carter County, Montana.

WHEREAS, Montana statutes provide for counties to improve the present health, welfare, and safety of its citizens and recognize the need of the agriculture industry and business for future growth; and

WHEREAS, the State of Montana has enacted laws which empower the County Commissioners to develop land use, resource management, and environmental planning processes necessary to serve the public health, safety, convenience and welfare; and

WHEREAS, the national Environmental Policy Act, and the Council on Environmental Quality Regulations at 40 CFR, Section 1506.2 and other regulation and the Intergovernmental Cooperation Act provide mechanisms for intergovernmental coordination and cooperation and joint environmental planning; and

WHEREAS, the National Environmental Policy Act, and the Council on Environmental Quality Regulations require that the assessment of the direct, indirect, and cumulative effects of Federal agency planning decisions on the environment including the ecological, aesthetic, historic, cultural, economic and other impacts that may occur as a result of private and/or governmental actions.

WHEREAS, Carter County has adopted a land use plan which sets forth a general declaration of the County's customs, culture, and economic stability and provides a framework for the analysis and resolution of land planning issues including environmental, social, cultural and other impacts that may occur as a result of private and/or governmental action.

WHEREAS, the National Environmental Policy Act provides that land and resource management plan established by Federal agencies must analyze local government plans to make them consistent where possible.

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Carter County, Montana, that Carter County has established a Planning Board according to State law and has adopted a master plan for Carter County.

Regarding any actions undertaken by the Federal land management agencies that consider, propose, or take any action that may affect or have the potential of affecting the use of land or natural resources in Carter County, Montana. Carter County shall encourage the Federal land management agencies to the fullest extent:

- A. Consider the effects such actions have on (i) community stability; (ii) maintenance of custom, culture and economic stability; and (iii) conservation and use of the environment and natural resources, as part of the action taken; and

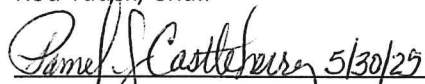
- B. Coordinate procedures to the fullest extent possible with the County, prior to and during the taking of and federal action; and
- C. Establish a process for such coordination, with the County by understanding or other agreement binding on the agencies including joint planning, joint environmental research and data collection, joint hearings, and joint environmental assessment; and
- D. Submit a list and description of alternative in light of possible conflicts with the County's ordinances, policies and plans, including the Comprehensive Plan; consider reconciling the proposed action with the County's ordinances, policies and plans, including the Comprehensive Plan; and after such consideration, take all practical measures to resolve such conflict and display the results of such consideration in appropriate documentation; and
- E. Assume that any proposed actions will have a significant impact on County conditions and that coordination and consultation with the County and review of data specific to the County is a necessary prerequisite to all such planning activities; and
- F. Coordinate, in absence of a direct constitutional conflict, with the County to comply with Federal statutes and regulations, and County ordinances, policies and plans, including the Comprehensive Plan; and
- G. Adopt appropriate mitigation measures with the concurrence of the County to adequately mitigate adverse impacts on local culture, custom, economic stability or protection and use of the environment; and
- H. Preserve private property rights of citizens of Carter County against violation through regulatory means or otherwise.

BE IT FURTHER RESOLVED, that Carter County, Montana, notify all Federal agencies administering land or conduction programs in Carter County, Montana, of adoption of this resolution and of the County's request for inclusion in all planning processes to the fullest extent required or permitted by law and in particular the National Environmental Policy Act.


Enacted in open session of the Commission on the 30<sup>th</sup> day of May, 2025.

BOARD OF COUNTY COMMISSIONERS  
CARTER COUNTY, MONTANA

  
Rod Tauck, Chair

  
Pamela J. Castleberry, Vice-Chair

  
Dan Dinstel, Member

Attest:   
Judy Wright, Clerk & Recorder

Commissioners Note to Resolution 05302025-04

Many times when counties pass resolutions such as 05302025-04, the perception is that there are problems with the federal land management agencies. For the record, in Carter County this is not the case. In fact, the total opposite is true.

Since 1994, Carter County has participated with the State and Federal agencies in a coordinated approach to planning in Carter County. Adoption of this new approach to planning forced everyone to do business in an entirely different manner. At this time, Carter County would like to recognize and commend all agency personnel for their proactive approach to this unique and different planning situation.

However, as a result of feedback from citizens active in the process, it became apparent that Carter County needed to formalize the coordination process and develop its own resource plan. Adoption of Resolution 05302025-04 will facilitate accomplishment of these goals.

## **APPENDIX I: ACKNOWLEDGEMENTS**

### **CARTER COUNTY BOARD OF COMMISSIONERS**

Rod Tauck, Chairman  
Pamela Castleberry, Commissioner  
Dan Dinstel, Commissioner

### **CARTER COUNTY STAFF**

Judy Wright, Clerk & Recorder  
Dana Eshelman, Deputy Clerk & Recorder  
Melissa Schwede, Administrative Assistant

### **CARTER COUNTY PLANNING BOARD**

Sharon Carroll, Chairman  
Robin Diede, Vice-Chairman  
Cam LaBree, Secretary  
Travis Loehding, Member  
Andy Wright, Member

The Carter County Resource Use Committee (CCRUC) would like to extend its appreciation to the Boards and Staff for their support of the CCRUC and the process of developing this plan. We appreciate the efforts of Planning Board members, who contributed their experience and perspective to help create the revision of the Plan.

### **CARTER COUNTY RESOURCE USE PLAN COMMITTEE OFFICERS & CHAIRMEN**

The Resource Sub-Committee Chair and CCRUC Officers were the individuals responsible for organizing the meetings and keeping the planning process moving.

### **CARTER COUNTY RESOURCE USE COMMITTEE MEMBERS**

Following is a list of people who are responsible for the revision of this Plan.

Llane Carroll  
Sabre Moore Carroll  
Adam Courtney  
Robin Diede  
Lee LaBree  
Meghan Phillippi  
J.O. Tooke  
Amanda Williams  
Wayne Yost

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